OFFICIAL CODE OF GEORGIA ANNOTATED

2014 Supplement

Including Acts of the 2014 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 27

2012 Edition

Title 35. Law Enforcement Officers and Agencies

Title 36. Local Government

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

ISBN 978-0-327-11074-3 (set)
ISBN 978-0-7698-4590-6

5014731

(Pub.41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

Contacting LexisNexis®:

Visit our Website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, please write or call toll free at 1-800-833-9844, fax at 1-518-487-3584, or email us at Customer.Support@lexisnexis.com. Direct written inquiries to:

LexisNexis®
Attn: Official Code of Georgia Annotated
701 East Water Street
Charlottesville, Virginia 22902-5389

TITLE 35

LAW ENFORCEMENT OFFICERS AND AGENCIES

Chap.

CHAPTER 1

GENERAL PROVISIONS

35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.

Cross references. — Prohibition on minimum waiting periods for initiating missing person report, § 35-1-18.

35-1-9. Utilization of alarm verification required.

(a) As used in this Code section, the term:

(1) "Alarm monitoring company" means any person, company, corporation, partnership, business, or a representative or agency thereof authorized to provide alarm monitoring services for burglar alarm systems, fire alarm systems, or other similar electronic security systems whether such systems are maintained on commercial business property, public property, or individual residential property.

(2) "Alarm verification" means a reasonable attempt by an alarm monitoring company to contact the alarm site or alarm user, by telephone or other electronic means, to determine whether a burglar alarm signal is valid prior to requesting law enforcement to be

dispatched to the location and, where the initial attempted contact cannot be made, a second reasonable attempt to make such contact utilizing a different telephone number or electronic address or number.

(b) Except as provided in subsection (c) of this Code section, an alarm monitoring company shall utilize a system providing for alarm verification of all alarm signals.

(c) Alarm verification shall not be required in the case of a fire alarm or a panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified to be true by video or audible means. (Code 1981, § 35-1-9, enacted by Ga. L. 2013, p. 750, § 1/HB 59.)

Effective date. — This Code section became effective July 1, 2013.

Editor's notes. — This Code section formerly pertained to the prohibition of inspecting or copying records of law enforcement agency for commercial solicitation and was based on Ga. L. 1999, p. 1868, § 1. The former Code section was repealed by Ga. L. 1999, p. 809, § 2, effective July 1, 1999.

35-1-18. Prohibition on minimum waiting periods for initiating missing person report.

No law enforcement agency shall implement a policy or practice which mandates a minimum waiting period before initiating a missing person report with such agency; provided, however, that it shall remain within the discretion of the law enforcement agency to determine what action, if any, is required in response to such a report. (Code 1981, § 35-1-18, enacted by Ga. L. 2014, p. 704, § 2/SB 23.)

Effective date. — This Code section became effective July 1, 2013. See editor's note for effective dates that precede Governor's approval.

Cross references. — Kidnapping, § 16-5-40. Immediate investigation for missing person with Alzheimer's disease, § 35-1-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-1-19. Disclosure of arrest booking photographs prohibited.

(a) As used in this Code section, the term "booking photograph" means a photograph or image of an individual taken by an arresting law enforcement agency for the purpose of identification or taken when such individual was processed into a jail.

(b) Except as provided in Code Section 50-18-77 and booking photographs required for publication as set forth in Titles 16 and 40, for the State Sexual Offender Registry, and for use by law enforcement agencies for administrative purposes, an arresting law enforcement agency or agent thereof shall not post booking photographs to or on a website.

(c) An arresting law enforcement agency shall not provide or make available a copy of a booking photograph in any format to a person requesting such photograph if:

(1) Such booking photograph may be placed in a publication or posted to a website or transferred to a person to be placed in a publication or posted to a website; and

(2) Removal or deletion of such booking photograph from such publication or website requires the payment of a fee or other consideration.

(d) When a person requests a booking photograph, he or she shall submit a statement affirming that the use of such photograph is in compliance with subsection (c) of this Code section. Any person who knowingly makes a false statement in requesting a booking photograph shall be guilty of a violation of Code Section 16-10-20. (Code 1981, § 35-1-19, enacted by Ga. L. 2014, p. 742, § 1/HB 845.)

Effective date. — This Code section became effective July 1, 2014.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

CHAPTER 2

DEPARTMENT OF PUBLIC SAFETY

Article 2

Georgia State Patrol

Sec.

ARTICLE 2

GEORGIA STATE PATROL

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

(a) Any offer to donate or convey by deed, gift, rent, lease, or other means any property, equipment, or services to the department shall be made in writing through command channels to the commissioner. If the commissioner approves the offer, he or she shall submit a written proposal of the offer to the board for its approval. A copy of the formal proposal shall be forwarded by the commissioner to the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office, any of which may comment on the proposal.

(b) Title to real property shall be in the State of Georgia for the use of the Department of Public Safety. No member of the department shall be authorized to accept any donation or conveyance of property, equipment, or services unless the provisions of this Code section have been complied with and until the board has approved the donation or conveyance. (Code 1981, § 35-2-41.1, enacted by Ga. L. 1985, p. 486, § 3; Ga. L. 2008, p. VO1, § 1-16/HB 529; Ga. L. 2014, p. 866, § 35/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Senate Budget and Evaluation Office" for "Senate Budget Office" and substituted "House Budget and Research Office" for "House Budget Office" in the last sentence of subsection (a).

CHAPTER 3

GEORGIA BUREAU OF INVESTIGATION

Article 1

General Provisions

Article 2

Georgia Crime Information Center

ARTICLE 1

GENERAL PROVISIONS

35-3-4. Powers and duties of bureau generally.

(a) It shall be the duty of the bureau to:

(1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements of persons in cooperation with the bureaus and departments of other states and of the United States;

(2) Exchange information relating to crime and criminals;

(3) Keep permanent files and records of such information procured or received;

(4) Provide for the scientific investigation of articles used in committing crimes or articles, fingerprints, or bloodstains found at the scene of a crime;

(5) Provide for the testing and identification of weapons and projectiles fired therefrom;

(6) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(7) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the bureau shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(8) Exchange such records and information as provided in paragraphs (6) and (7) of this subsection with, and for the official use of, authorized officials of the federal government, the states, cities, counties, and penal and other institutions. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies;

(9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;

(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16, relating to offenses related to minors;

(11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;

(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

(13) Identify and investigate violations of Code Section 16-5-46;

(14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16; and

(15)(A) Acquire, collect, analyze, and provide to the board any information which will assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14, including, but not limited to, obtaining:

(i) Incident, investigative, supplemental, and arrest reports from law enforcement agencies;

(ii) Records from clerks of court;

(iii) Records and information maintained by prosecuting attorneys;

(iv) Records maintained by state agencies, provided that any records provided by the State Board of Pardons and Paroles that are classified as confidential state secrets pursuant to Code

Section 42-9-53 shall remain confidential and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles; and

(v) Other documents or information as requested by the board.

(B) As used in this paragraph, the term:

(i) "Board" means the Sexual Offender Registration Review Board.

(ii) "Risk assessment classification" means the level into which a sexual offender is placed based on the board's assessment.

(iii) "Sexual offender" has the same meaning as set forth in Code Section 42-1-12.

(b) In addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the Department of Public Safety under this title. (Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1974, p. 109, § 2; Ga. L. 1977, p. 752, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1984, p. 690, § 2; Ga. L. 1985, p. 149, § 35; Ga. L. 1996, p. 416, § 9; Ga. L. 2007, p. 283, § 3/SB 98; Ga. L. 2008, p. 601, § 2/SB 388; Ga. L. 2010, p. 1162, § 2/SB 371; Ga. L. 2011, p. 217, § 9/HB 200; Ga. L. 2012, p. 351, § 5/HB 1110; Ga. L. 2012, p. 985, § 1/HB 895; Ga. L. 2013, p. 524, § 3-5/HB 78; Ga. L. 2013, p. 1056, § 3/HB 122.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8 or 16-5-100" in paragraph (a)(14). The second 2013 amendment, effective July 1, 2013, added the proviso at the end of division (a)(15)(A)(iv).

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

35-3-5. Director — Creation; appointment and removal; powers and duties.

(a) There is created the position of director.

(b) The director shall be the chief administrative officer and shall be both appointed and removed by the Board of Public Safety with the approval of the Governor.

(c) The director shall coordinate and supervise the work of the Georgia Child Fatality Review Panel created by Code Section 19-15-4 or shall designate a person from within the bureau to serve as the coordinator and supervisor and shall provide such staffing and admin-

istrative support to the Georgia Child Fatality Review Panel as may be necessary to enable it to carry out its statutory duties.

(d) The director shall report the death of any child to the chairperson of the review committee, as such term is defined in Code Section 19-15-1, for the county in which such child resided at the time of death, unless the director or his or her designee has knowledge that such death has been reported by the county medical examiner or coroner, pursuant to Code Section 19-15-3, and shall provide such review committee access to any records of the bureau relating to such child.

(e) Except as otherwise provided by this chapter, and subject to the general policy established by the board, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the bureau by this chapter. (Ga. L. 1974, p. 109, § 2; Ga. L. 2005, p. 599, § 2/SB 146; Ga. L. 2014, p. 34, § 2-8/SB 365.)

The 2014 amendment, effective July 1, 2014, added subsections (c) and (d) and redesignated former subsection (c) as present subsection (e).

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency relative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

35-3-7. Agreements by director and commissioner for provision of services and material.

Law reviews. — For article, "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Served," see 19 Ga. St. B.J. 26 (Feb. 2014).

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

35-3-33. Powers and duties of center generally.

(a) The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution;

(D) Are unidentified human corpses found in this state; or

(E) Are children who are charged with an offense that if committed by an adult would be a felony or are children whose cases are transferred from a juvenile court to another court for prosecution;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Periodically conduct audits of crime reporting practices of criminal justice agencies to ensure compliance with the standards of national and state uniform crime reporting systems and to ensure reporting of criminal arrests, dispositions, and custodial information;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish in print or electronically statistics, no less frequently than annually, that do not identify persons and report such information to the Governor, the General Assembly, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their

own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to criminal justice agencies;

(15) Receive and process fingerprints from the Supreme Court of Georgia Office of Bar Admissions for the purpose of determining whether or not an applicant for admission to the State Bar of Georgia has a criminal record. The processing shall include submission of fingerprints to the Georgia Bureau of Investigation and the Federal Bureau of Investigation for comparison to each of their respective files and data bases; and

(16) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Sections 15-12-40.1 and 21-2-231, without charge and in the electronic format requested.

(b) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "E", of the criminal history record information of an applicant for employment.

(c) The provisions of this article notwithstanding, information and records of children shall only be inspected and disclosed as provided in Code Sections 15-11-702 and 15-11-708. Such records and information shall be sealed or destroyed according to the procedures outlined in Code Sections 15-11-701 and 15-11-709. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 952, §§ 2, 4; Ga. L. 1984, p. 22, § 35; Ga. L. 1986, p. 513, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1998, p. 842, § 7; Ga. L. 2000, p. 20, § 21; Ga. L. 2000, p. 1549, § 1; Ga. L. 2003, p. 334, § 2; Ga. L. 2007, p. 43, § 1/SB 62; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 294, § 4-44/HB 242; Ga. L. 2014, p. 451, § 11/HB 776.)

The 2013 amendment, effective January 1, 2014, in subsection (c), substituted "Code Sections 15-11-702 and 15-11-708" for "Code Sections 15-11-82 and 15-11-83" in the first sentence, inserted "sealed or", and substituted "Code Sections 15-11-701 and 15-11-709" for "Code Sections 15-11-79.2 and 15-11-81" in the last sentence. See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, deleted "and" at the end of paragraph (a)(14); substituted "; and" for a period at the end of paragraph (a)(15); and added paragraph (a)(16).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

JUDICIAL DECISIONS

Cited in Gay v. Owens, 292 Ga. 480, 738 S.E.2d 614 (2013).

35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth;

(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 35-3-37; or

(2) Make criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and

may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(d.1) Reserved.

(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.3) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(d.4) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner

agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(3)(A) The records of the center shall include information as to whether a person has been involuntarily hospitalized. In order to carry out the provisions of Code Section 16-11-129, the center shall be provided such information and no other mental health information from the records of the probate and superior courts ordering persons to be involuntarily hospitalized. With respect to probate court records, such information shall be provided in a manner agreed upon by the Probate Judges Training Council and the bureau. With respect to superior court records, such information shall be provided in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the bureau. Such records shall be provided in a manner so as to preserve the confidentiality of patients' rights in all other respects.

(B) In order to carry out the provisions of Code Section 16-11-129, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or has been found not guilty by reason of insanity at the time of the crime. The clerk of court shall report such information to the center immediately but in no case later than ten days after such adjudication of mental incompetence or finding of not guilty by reason of insanity.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1;

Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2; Ga. L. 1994, p. 1895, § 12; Ga. L. 1995, p. 139, § 3; Ga. L. 1995, p. 633, §§ 1, 2; Ga. L. 1996, p. 6, § 35; Ga. L. 2000, p. 1206, § 1; Ga. L. 2003, p. 840, § 1; Ga. L. 2005, p. 613, § 2/SB 175; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 812, § 4/SB 532; Ga. L. 2012, p. 899, § 6-1/HB 1176; Ga. L. 2014, p. 599, § 1-13/HB 60.)

The 2014 amendment, effective July 1, 2014, added paragraph (e)(3).

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

(a) Where an offender has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences if the offender was exonerated and discharged without a court adjudication of guilt on or after July 1, 2004, and either:

(1) The request for information is an inquiry about a person who has applied for employment with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the person who is the subject of the inquiry to the center was prosecuted for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(2) The request for information is an inquiry about a person who has applied for employment with a long-term care facility as defined in Code Section 31-8-51 or a person or entity that offers day care for elderly persons and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a violation of Article 8 of Chapter 5 of Title 16; or

(3) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-1-1 or developmentally disabled as defined in Code Section 37-1-1, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.

(b) First offender records including records of arrests, charges, or sentences may be released to any law enforcement unit and the Georgia

Peace Officer Standards and Training Council where the request for information is an inquiry about a person who has applied for employment in a certified position or a person who is an applicant, candidate, or peace officer as defined in Code Section 35-8-2. (Code 1981, § 35-3-34.1, enacted by Ga. L. 2003, p. 840, § 3; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 164, § 1/HB 1335; Ga. L. 2009, p. 453, § 3-10/HB 228; Ga. L. 2011, p. 227, § 23/SB 178; Ga. L. 2013, p. 524, § 3-6/HB 78.)

The 2013 amendment, effective July 1, 2013, in paragraph (a)(2), substituted "long-term care facility as defined in Code Section 31-8-51" for "nursing home, assisted living community, personal care home," near the middle, and substituted "Article 8 of Chapter 5 of Title 16" for "Code Section 30-5-8" near the end.

35-3-37. Review of individual's criminal history record information; definitions; privacy considerations; written application requesting review; inspection.

(a) As used in this Code section, the term:

(1) "Drug court treatment program" means a treatment program operated by a drug court division in accordance with the provisions of Code Section 15-1-15.

(2) "Entity" means the arresting law enforcement agency, including county and municipal jails and detention centers.

(3) "Mental health treatment program" means a treatment program operated by a mental health court division in accordance with the provisions of Code Section 15-1-16.

(4) "Nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the laws of a state which would not be considered a serious traffic offense under the laws of this state if committed in this state.

(5) "Prosecuting attorney" means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term "prosecuting attorney" shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) "Restrict," "restricted," or "restriction" means that the criminal history record information of an individual relating to a particular

charge shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34.

(7) "Serious violent felony" shall have the same meaning as set forth in Code Section 17-10-6.1.

(8) "State" includes any state, the United States or any district, commonwealth, territory, or insular possession of the United States, and the Trust Territory of the Pacific Islands.

(9) "Veterans treatment program" means a treatment program operated by a veterans court division in accordance with the provisions of Code Section 15-1-17.

(10) "Youthful offender" means any offender who was less than 21 years of age at the time of his or her conviction.

(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center. The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed $15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days

of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal to the court with original jurisdiction of the criminal charges in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal charges that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division. A copy of the notice shall be sent to the accused and the accused's attorney, if any, by mailing the same by first-class mail; or

(ii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting attorney or transferred to another law enforcement or prosecutorial agency of this state, any other state or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual:

(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature, two years;

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34.

(B) The case was referred to the prosecuting attorney but was later dismissed; or

(C) The grand jury returned two no bills; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charges were dismissed or nolle prossed;

(B) The individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation;

(C) The individual successfully completed a drug court treatment program, mental health treatment program, or veterans treatment program, the individual's case has been dismissed or nolle prossed, and he or she has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense; or

(D) The individual was acquitted of all of the charges by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

(ii) The individual has been formally charged with the same or similar offense within the previous five years.

(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

(1) The charges were nolle prossed or otherwise dismissed because:

(A) Of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine;

(C) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of the state or a foreign nation; or

(D) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;

(2) The charges were tried and some but not all of the charges resulted in an acquittal; or

(3) The individual was acquitted of all charges but it is later determined that the acquittal was the result of jury tampering or judicial misconduct.

(j)(1) When an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for the felony charge within four years of the arrest. Such court shall maintain jurisdiction over the case for this

limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(3) When an individual's case has remained on the dead docket for more than 12 months, such individual may petition the superior court in the county where the case is pending to restrict access to criminal history record information for such offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the case was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his

or her sentence, has not been arrested for at least five years, excluding any arrest for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she may petition the superior court in the county where the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the individual's conduct and the public's interest in the criminal history record information being publicly available.

(B) Record restriction shall not be appropriate if the individual was convicted of:

(i) Child molestation in violation of Code Section 16-6-4;

(ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(iii) Sexual assault by persons with supervisory or disciplinary authority in violation of Code Section 16-6-5.1;

(iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

(v) Pimping in violation of Code Section 16-6-11;

(vi) Pandering by compulsion in violation of Code Section 16-6-14;

(vii) Masturbation for hire in violation of Code Section 16-6-16;

(viii) Giving massages in a place used for lewdness, prostitution, assignation, or masturbation for hire in violation of Code Section 16-6-17;

(ix) Sexual battery in violation of Code Section 16-6-22.1;

(x) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or

(xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

(5) Any party may file an appeal of an order entered pursuant to this subsection as provided in Code Section 5-6-34.

(k)(1) The center shall notify the arresting law enforcement agency of any criminal history record information, access to which has been restricted pursuant to this Code section, within 30 days of the date access to such information is restricted. Upon receipt of notice from the center that access to criminal history record information has been restricted, the arresting law enforcement agency or other law enforcement agency shall, within 30 days, restrict access to all such information maintained by such arresting law enforcement agency or other law enforcement agency for such individual's charge.

(2) An individual who has had criminal history record information restricted pursuant to this Code section may submit a written request to the appropriate county or municipal jail or detention center to have all records for such individual's charge maintained by the appropriate county or municipal jail or detention center restricted. Within 30 days of such request, the appropriate county or municipal jail or detention center shall restrict access to all such criminal history record information maintained by such appropriate county or municipal jail or detention center for such individual's charge.

(3) The center shall be authorized to unrestrict criminal history record information based on the receipt of a disposition report showing that the individual was convicted of an offense arising out of an arrest of which the information was restricted pursuant to this Code section.

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the charges in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charge. Notice of such petition

shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(4) The person who is the subject of such sealed criminal history record information may petition the court for inspection of the criminal history record information included in the court order. Such information shall always be available for inspection, copying, and use by criminal justice agencies and the Judicial Qualifications Commission.

(n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed $50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if the request meets the criteria set forth in subsection (h) of this Code section for record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision within such 90 day period. If the prosecuting attorney denies such request, he or she shall cite with specificity the reason for such denial in writing and attach to such denial any relevant documentation in his or her possession used to make such denial. There shall be a presumption that the prosecuting attorney does not object to the request to restrict the criminal history record information if he or she

fails to respond to the request for a determination within the 90 day period set forth in this paragraph. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's decision, and, if record restriction is approved by the prosecuting attorney, the arresting law enforcement agency shall restrict the criminal history record information within 30 days of receipt of the prosecuting attorney's decision.

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney to decline a request to restrict access to criminal history record information shall be upheld unless the individual demonstrates by clear and convincing evidence that the arrest is eligible for record restriction pursuant to subsection (h) of this Code section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days of receiving such information.

(o) Nothing in this Code section shall give rise to any right which may be asserted as a defense to a criminal prosecution or serve as the basis for any motion that may be filed in any criminal proceeding. The modification, correction, supplementation, amendment, or restriction of criminal history record information shall not abate or serve as the basis for the reversal of any criminal conviction.

(p) Any application to the center for access to or restriction of criminal history record information made pursuant to this Code section shall be made in writing on a form approved by the center. The center shall be authorized to develop and publish such procedures as may be necessary to carry out the provisions of this Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply.

(q) It shall be the duty of the entity to take such action as may be reasonable to prevent disclosure of information to the public which would identify any individual whose criminal history record information is restricted pursuant to this Code section.

(r) If the center has notified a firearms dealer that an individual is prohibited from purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such individual being involuntarily hospitalized within the immediately preceding five years, upon such individual or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the individual or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such individual's eligibility to possess or transport a handgun. (Code 1981, § 35-3-37, enacted by Ga. L. 2012, p. 899, § 6-2/HB 1176; Ga. L. 2013, p. 222, § 14/HB 349; Ga. L. 2014, p. 79, § 3/SB 320; Ga. L. 2014, p. 404, § 2-2/SB 382.)

The 2013 amendment, effective July 1, 2013, in paragraph (j)(1), substituted the present provisions of the first sentence for the former provisions, which read: "When an individual had felony charges dismissed or nolle prossed or was found not guilty of felony charges but was convicted of a misdemeanor offense or offenses arising out of the same underlying transaction or occurrence, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such felony charges within four years of the arrest.", and, near the end of the last sentence, substituted "that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available" for "the charges in question did not arise out of the same underlying transaction or occurrence"; in paragraph (n)(1), substituted "Except as provided in subsection (j) of this Code section, as" for "As" at the beginning of the first sentence; in paragraph (n)(2), in the second sentence, substituted "the request meets the criteria set forth in subsection (h) of this Code section for" for "he or she agrees to", and added the third and fourth sentences; in paragraph (n)(3), substituted the present provisions of the third sentence for the former provisions, which read: "A decision of the prosecuting attorney shall not be upheld if it is determined by clear and convincing evidence that the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available"; and, in paragraph (n)(4), substituted "of receiving" for "from receiving" in the last sentence. See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added present paragraph (a)(9); redesignated former paragraph (a)(9) as present paragraph (a)(10); and, near the middle of subparagraph (h)(2)(C), substituted a comma for "or" following "drug court treatment program" and inserted "or veterans treatment program,". The second 2014 amendment, effective July 1, 2014, substituted "shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable" for "shoplifting in violation of Code Section 16-8-14" in division (j)(4)(B)(xi).

Editor's notes. — Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service

to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

JUDICIAL DECISIONS

Cited in Sosniak v. State, 292 Ga. 35, 734 S.E.2d 362 (2012).

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 ALR6th 1.

35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.

Law reviews. — For note, "Just You and Me and Netflix Makes Three: Implications for Allowing 'Frictionless Sharing' of Personally Identifiable Information under the Video Privacy Protection Act," see 20 J. Intell. Prop. L. 413 (2013).

ARTICLE 4

MISSING CHILDREN INFORMATION CENTER

35-3-83. Missing child reports.

Upon the filing of a police report by the parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child that a child is missing, the local law enforcement agency receiving such report shall notify all of its on-duty law enforce-

ment officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center. (Code 1981, § 35-3-83, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2014, p. 481, § 1/SB 358.)

The 2014 amendment, effective July 1, 2014, substituted "parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child" for "parent or guardian".

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

35-3-163. Dissemination of information in data bank to law enforcement officials; comparison of profile; request for search; separate statistical data base authorized; fee for search and comparative analysis.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecutor or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation where the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except upon conviction as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the convicted felon whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a postconviction proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare a DNA profile which has been generated by the accused through an independent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base composed of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state. (Code 1981, § 35-3-163, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2013, p. 141, § 35/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "composed of DNA" for "comprised of DNA" in the first sentence of subsection (e).

35-3-165. Expungement of profile in data bank upon reversal and dismissal of conviction.

RESEARCH REFERENCES

ALR. — Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sen-

tence, and where expungement relief predicated upon type, and number, of offenses, 69 ALR6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 ALR6th 1.

ARTICLE 7

STATE-WIDE ALERT SYSTEM FOR MISSING DISABLED ADULTS

35-3-170. Short title.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-171. Definitions.

As used in this article, the term:

(1) "Alert system" means the state-wide "Mattie's Call" alert system for missing disabled adults and medically endangered persons.

(2) "Disabled adult" means an adult who is developmentally impaired or who suffers from dementia or some other cognitive impairment.

(3) "Local law enforcement agency" means a law enforcement agency with jurisdiction over the investigation of a missing disabled adult or other medically endangered person.

(4) "Medically endangered person" means a person with a known medical condition that might reasonably cause such person to become incapacitated or that may result in life-threatening physiological conditions likely to lead to serious bodily injury or death if not immediately treated. (Code 1981, § 38-3-111, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-171, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added "and medically endangered persons" to the end of paragraph (1); in paragraph (3), deleted "local" following "means a" near the beginning and added "or other medically endangered persons" at the end; and added paragraph (4). See editor's notes for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704,

§ 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-172. Development and implementation of state-wide alert system for disabled adults and medically endangered persons.

(a) With the cooperation of the office of the Governor, the Georgia Lottery Corporation, and other appropriate law enforcement agencies in this state, the bureau shall develop and implement a state-wide alert system to be activated on behalf of missing disabled adults and medically endangered persons.

(b) Activation of a state-wide missing person alert system shall not prevent or prohibit any other state or local law enforcement agency from taking additional measures in response to the receipt of a missing person report. (Code 1981, § 38-3-112, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-172, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a); in subsection (a), added "and medically endangered persons" at the end; and added subsection (b). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-173. Director to be state-wide coordinator for alert system.

(a) The director is the state-wide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives shall include instructions on the procedures for activating and deactivating the alert system.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

(d) No rule or directive adopted by the director shall mandate a minimum waiting period before the alert system may be activated or a request by local law enforcement agencies may be submitted to the

bureau; provided, however, that it shall remain within the discretion of the director, as provided in this article, whether the alert system shall be activated at the request of a local law enforcement agency.

(e) When making a determination whether to activate or whether to request the activation of a state-wide missing person alert system, both the director and the requesting local law enforcement agency shall take into consideration the known medical condition of the missing person if the medical condition may reasonably be considered a cause for the inability to locate such missing person. In so considering the medical condition of a missing person, particularly if such condition may be immediately life-threatening or incapacitating, the director or other authorized person and the requesting law enforcement official shall be authorized, within his or her discretion, to initiate and request, respectively, a state-wide endangered person advisory. (Code 1981, § 38-3-113, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-173, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, added subsections (d) and (e). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective

July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-176. Criteria for activating alert system.

(a) On notification by a local law enforcement agency that a disabled adult or medically endangered person is missing, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a disabled adult or medically endangered person is missing;

(2) A local law enforcement agency believes that the disabled adult or medically endangered person is in immediate danger of serious bodily injury or death;

(3) A local law enforcement agency confirms that an investigation has taken place that verifies the disappearance and eliminates alternative explanations for the disabled adult's or medically endangered person's disappearance; and

(4) Sufficient information is available to disseminate to the public that could assist in locating the disabled adult or medically endangered person.

(b) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the disabled adult or medically endangered person did not leave a certain geographic location.

(c) The bureau may modify the criteria described by subsection (a) of this Code section as necessary for the proper implementation of the alert system. (Code 1981, § 38-3-115, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-176, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" throughout this Code section. See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-177. Verification that criteria for activation have been met.

Before requesting activation of the alert system, a law enforcement agency shall verify that the criteria described by subsection (a) of Code Section 35-3-176 have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert, based on the nature of the disabled adult or medically endangered person and the circumstances surrounding the disappearance. On verification of the criteria, the law enforcement agency shall immediately contact the bureau to request activation and shall supply the necessary information on the forms prescribed by the director. (Code 1981, § 38-3-116, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-177, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, deleted "local" preceding "law enforcement" three times throughout the Code section and inserted "or medically endangered person" in the second sentence. See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-179. Termination of alert system with respect to particular disabled adult or medically endangered person.

The director shall terminate any activation of the alert system with respect to a particular disabled adult or medically endangered person if:

(1) The person is located or the disappearance is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating and recovering the disabled adult or medically endangered person. (Code 1981, § 38-3-118, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-179, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.)

The 2014 amendment, effective July 1, 2013, inserted "or medically endangered person" twice in this Code section and substituted "person" for "adult" in paragraph (1). See editor's note for effective dates that precede Governor's approval.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-3-180. Immunity from civil damages for dissemination of alert information.

Editor's notes. — Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 3/SB 23, effective July 1, 2013, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

ARTICLE 8

ALERT SYSTEMS FOR UNAPPREHENDED SUSPECTS

35-3-190. State-wide alert system for unapprehended murder or rape suspects determined to be serious public threats.

(a) There is established a state-wide alert system known as "Kimberly's Call."

(b) As used in this article, the term "local law enforcement agency" means a local law enforcement agency with jurisdiction over the search for a suspect in a case of murder or rape.

(c) The director shall develop and implement a state-wide alert system to be activated when a suspect for the crime of murder, felony murder, or murder in the second degree as defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Kimberly's Call" as set forth in this Code section.

(e) On notification by a local law enforcement agency that a suspect in a case of murder or rape has not been apprehended and may be a serious threat to the public, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a suspect has not been apprehended;

(2) A local law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

(f) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(g) Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by subsection (e) of this Code section have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime.

(h) The director shall terminate any activation of the alert system with respect to a particular suspect if:

(1) The suspect is located or the incident is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating the suspect.

(i) Any entity or individual participating in the "Kimberly's Call" alert system pursuant to this Code section shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Kimberly's Call" alert system. (Code 1981, § 38-3-120, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 38-3-130, as redesignated by Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-190, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 444, § 2-10/HB 271.)

The 2014 amendment, effective July 1, 2014, substituted "murder, felony murder, or murder in the second degree" for "murder" in the middle of subsection (c).

CHAPTER 8

EMPLOYMENT AND TRAINING OF PEACE OFFICERS

35-8-1. Short title.

JUDICIAL DECISIONS

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-2. Definitions.

As used in this chapter, the term:

(1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) "Council" means the Georgia Peace Officer Standards and Training Council.

(4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The

provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department or institutions, and the office or

section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services; and

(C) The Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by said department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, the supervision of delinquent children in the department's institutions, facilities, or programs, or the supervision of delinquent children under intensive supervision in the community;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser. (Ga. L. 1970, p. 208, §§ 2, 14; Ga. L. 1975, p. 1165, §§ 2, 3, 10; Ga. L. 1976, p. 395, §§ 1-5; Ga. L. 1978, p. 992, §§ 1, 2; Ga. L. 1978, p. 2299, § 1; Ga. L. 1980, p. 979, § 1; Ga. L. 1981, p. 778, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 1, 2, 5, 6; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 1141, § 1; Ga. L. 1989, p. 568, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 966, §§ 1, 2; Ga. L. 1995, p. 880, § 1; Ga. L. 1995, p. 1238, § 1; Ga. L. 1996, p. 1281, § 1; Ga. L. 1997, p. 582, §§ 1, 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1997, p. 1488, §§ 2A, 2B, 7A, 7B; Ga. L. 1998, p. 128, § 35; Ga. L. 1998, p. 224, § 2; Ga. L. 1999, p. 777, §§ 2, 3; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2013, p. 294, § 4-45/HB 242; Ga. L. 2014, p. 382, § 1/SB 324.)

The 2013 amendment, effective January 1, 2014, in subparagraphs (7)(B) and (8)(B), substituted "delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services" for "unruly and delin-

quent children"; substituted "such department" for "said department" near the middle of subparagraph (7)(B); and deleted "and unruly" following "delinquent" near the end of subparagraph (8)(B.1). See editor's note for applicability.

The 2014 amendment, effective July 1, 2014, deleted "or" following "of crime," and "added , or the supervision of delinquent children under intensive supervision in the community" to the end of subparagraph (8)(B.1).

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

JUDICIAL DECISIONS

Court lacked subject matter jurisdiction. — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law, thus, the default judgment entered on that claim was a nullity and the trial court lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. Ferrell v. Young, 323 Ga. App. 338, 746 S.E.2d 167 (2013).

Discretionary authority. — With respect to law enforcement officers claiming qualified immunity in a case alleging that certain searches violated Fourth Amendment rights, the officers could show that the officers were acting within the officers' discretionary authority because it is clear that performing searches and assisting in arrests are legitimate job-related functions within the power of law enforcement bodies under O.C.G.A. § 35-8-2(8)(A). Mehta v. Foskey, No. 510-001, 2012 U.S. Dist. LEXIS 91009 (S.D. Ga. June 29, 2012).

35-8-7. Powers and duties of council generally.

JUDICIAL DECISIONS

Cited in State v. Hartsfield, 318 Ga. App. 692, 734 S.E.2d 513 (2012).

35-8-7.1. Authority of council to refuse certificate to applicant or to discipline council certified officer or exempt officer; grounds; restoration of certificate; emergency suspension of certification; notice of investigation.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a council certified officer or exempt officer under this chapter or any antecedent law upon a determination by the council that the applicant, council certified officer, or exempt officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate

to the satisfaction of the council that he or she meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being an officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as an officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his or her certificate or license to practice as an officer revoked, suspended, or annulled by any lawful certifying or licensing authority; had other disciplinary action taken against him or her by any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as an officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the officer on probation, which may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to an officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its

authority to discipline any officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e) Upon initiating an investigation of an officer for possible disciplinary action or upon disciplining an officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(f) If the certification of an officer is suspended or revoked by either the executive director or council, then the council shall notify the head of the law enforcement agency that employs the officer; the district attorney of the judicial circuit in which such law enforcement agency is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the officer and state the length of time, if known, that the officer will not have powers of arrest. Such notice shall be sent by priority mail. (Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237, § 1/SB 373; Ga. L. 2011, p. 506, § 1/HB 203; Ga. L. 2013, p. 864, § 1/HB 366.)

The 2013 amendment, effective July 1, 2013, throughout this Code section, substituted "an officer" for "a peace officer", deleted "peace" preceding "officer", and deleted "peace" preceding "officer's"; in the introductory paragraph of subsection (a), substituted "council certified officer or exempt officer" for "certified peace officer or exempt peace officer" near the middle, and substituted "applicant, council certified officer, or exempt officer" for "applicant or certified peace officer or exempt peace officer" near the end; inserted "or she" in the second sentence of paragraph (a)(1); in paragraph (a)(5), inserted "or her" twice, and deleted "or" preceding "had other disciplinary"; substituted "public; such conduct" for "public, which conduct" in the first sentence of paragraph (a)(6); substituted "punishable, so long as such law" for "punishable, which law" in paragraph (a)(7); and deleted "probation" preceding "may be vacated" near the middle of paragraph (b)(2).

35-8-8. Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; "employment related information" defined.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercise of the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of 30 days after an unsuccessful attempt. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c)(1) For purposes of this subsection, the term "employment related information" means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed $25.00 or $0.25 per page, whichever is greater. No employer shall be required to prepare or create any document not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related

information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

(6) Nothing contained in this Code section shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located. (Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373; Ga. L. 2011, p. 545, § 1/SB 95; Ga. L. 2013, p. 864, § 2/HB 366.)

The 2013 amendment, effective July 1, 2013, substituted "30 days" for "six months" in the fourth sentence of paragraph (a)(8).

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

JUDICIAL DECISIONS

No twelve month gap in employment of deputy. — When a deputy arrested a person for being drunk at a high school football game, the deputy was entitled to qualified immunity as to the arrestee's excessive force claim because, inter alia, the deputy was certified under Georgia law, and thus, the requirement that registered peace officers not have more than a 12-month gap between posi-

tions in law enforcement was inapplicable to the deputy. Collins v. Ensley, No. 11-16077, 2012 U.S. App. LEXIS 24024 (11th Cir. Nov. 21, 2012) (Unpublished).

35-8-14. Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests.

Reserved. Repealed by Ga. L. 1982, p. 2478, § 9, effective November 1, 1982.

Editor's notes. — Ga. L. 2013, p. 141, § 35/HB 79, effective April 24, 2013, reserved the designation of this Code section.

35-8-21. Training requirements for peace officers; waiver; exemption for retired peace officers; confirmation of training.

(a) During calendar year 1999 and during each calendar year thereafter, any person employed or appointed as a peace officer shall complete 20 hours of training as provided in this Code section; provided, however, that any peace officer serving with the Department of Public Safety who is a commissioned officer shall receive annual training as specified by the commissioner of public safety.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the Georgia Peace Officer Standards and Training Council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter shall be excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a peace officer that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section for the year in which he or she retires. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be

deemed to grant an exemption to persons required to complete the annual training requirement of this Code section.

(g) Any person required to comply with this Code section shall provide confirmation of his or her training for the previous year to the council in a manner required by the council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification by the executive director. The order of emergency suspension issued by the executive director shall be made in writing and shall specify the basis for the determination. The emergency suspension order shall continue in effect until the training requirements are confirmed or a waiver is issued pursuant to subsection (e) of this Code section. An emergency suspension issued pursuant to this subsection shall be automatically withdrawn upon confirmation of required training or the issuance of a waiver by the council. (Code 1981, § 35-8-21, enacted by Ga. L. 1988, p. 1063, § 1; Ga. L. 1999, p. 777, § 5; Ga. L. 2004, p. 986, § 2A; Ga. L. 2013, p. 864, § 3/HB 366.)

The 2013 amendment, effective July 1, 2013, deleted "after April 1 in any calendar year" following "chapter" in the middle of subsection (c); inserted "or her" in subsection (d); inserted "or she" near the middle of subsection (e); added "for the year in which he or she retires" at the end of the first sentence of subsection (f); and added subsection (g).

35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

Delayed effective date. — Ga. L. 2006, p. 666, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2007, excepting that provisions applying to council certification and provisions for training offered by the Georgia Public Safety Training Center shall become effective six months after the effective date of an appropriations Act containing a specific appropriation to fund certification by the council and training by the center." Funds were not appropriated at the 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, or 2014 sessions of the General Assembly.

TITLE 36

LOCAL GOVERNMENT

Provisions Applicable to Counties Only

Chap.

5. Organization of County Government, 36-5-1 through 36-5-29.

12. Supervision and Support of Paupers, 36-12-1 through 36-12-5.

Provisions Applicable to Municipal Corporations Only

32. Municipal Courts, 36-32-1 through 36-32-40.

33. Liability of Municipal Corporations for Acts or Omissions, 36-33-1 through 36-33-6.

37. Acquisition and Disposition of Real and Personal Property Generally, 36-37-1 through 36-37-10.

42. Downtown Development Authorities, 36-42-1 through 36-42-16.

44. Redevelopment Powers, 36-44-1 through 36-44-23.

Provisions Applicable to Counties and Municipal Corporations

60. General Provisions, 36-60-1 through 36-60-26.

66B. Mobile Broadband Infrastructure Leads to Development, 36-66B-1 through 36-66B-7.

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

80. General Provisions, 36-80-1 through 36-80-23.

81. Budgets and Audits, 36-81-1 through 36-81-20.

82. Bonds, 36-82-1 through 36-82-256.

87. Participation in Federal Programs, 36-87-1 through 36-87-2.

91. Public Works Bidding, 36-91-1 through 36-91-102.

Provisions Applicable to Counties Only

CHAPTER 1

GENERAL PROVISIONS

36-1-4. When county liable to be sued.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Extent of immunity.

Sovereign immunity barred the plaintiff's claims against the defendant county because, under O.C.G.A. § 36-1-4, a county was not liable to suit for any cause of action unless made so by statute, and the county's sovereign immunity had not been waived with respect to the claims asserted by the plaintiff. McRae v. Perry, No. 211-193, 2012 U.S. Dist. LEXIS 169081 (S.D. Ga. Nov. 28, 2012).

O.C.G.A. § 36-1-4 includes actions brought under a theory of negligence.

Trial court correctly rejected a county's claim that the whistleblower statute did not constitute a valid waiver of the sovereign immunity from suit provided to counties under Ga. Const. 1983, Art. I, Sec. II, Para. IX(e) because, to the extent that employees asserted causes of action under O.C.G.A. § 45-1-4, the county's sovereign immunity was waived; the cause of action for relief set forth in O.C.G.A. § 45-1-4 unambiguously expresses a specific waiver of sovereign immunity and the extent of such waiver. Fulton County v. Colon, 316 Ga. App. 883, 730 S.E.2d 599 (2012).

Medical care for inmates. — Trial court correctly determined that the state law claims made against a county and against a sheriff and medical contract compliance administrator in their official capacities were barred because, although O.C.G.A. § 42-5-2(a) imposed upon the county the duty and cost of medical care for inmates in the county's custody, it did not waive sovereign immunity of the county or the county's agents or employees. Graham v. Cobb County, 316 Ga. App. 738, 730 S.E.2d 439 (2012).

County's immunity regarding tax sale. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX (e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give it notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 756 S.E.2d 11, 2014 Ga. App. LEXIS 90 (2014).

CHAPTER 3

COUNTY BOUNDARIES

ARTICLE 2

SETTLEMENT OF BOUNDARY DISPUTES

36-3-20. Presentment of boundary dispute by grand jury; certification to Governor; appointment of surveyor to define line; return of survey and plat to Secretary of State.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-23. Filing of survey and plat with Secretary of State; time for protest or exceptions thereto.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-24. Notice and hearing of protest or exceptions by Secretary of State.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

36-3-25. Recordation of survey and plat; conclusive effect; subsequent changes of boundary line.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760 (2014).

CHAPTER 5

ORGANIZATION OF COUNTY GOVERNMENT

Article 2
County Governing Authorities

ARTICLE 2

COUNTY GOVERNING AUTHORITIES

36-5-24. Definitions; compensation of members of county governing authorities.

(a) As used in this Code section, the term:

(1) "County governing authority" means a governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected county chief executive officer.

(2) "Expenses in the nature of compensation" means any expense allowance or any form of payment or reimbursement of expenses other than reimbursement for expenses actually and necessarily incurred by members of a county governing authority.

(b) Unless otherwise provided by local law, the governing authority of each county is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the members of the governing authority subject to the following conditions:

(1) Any increase in salary, compensation, expenses, or expenses in the nature of compensation for members of a county governing authority shall not be effective until the first day of January of the

year following the next general election held after the date on which the action to increase the compensation was taken;

(2) A county governing authority shall take no action to increase salary, compensation, expenses, or expenses in the nature of compensation until notice of intent to take such action and the fiscal impact of such action has been published in a newspaper designated as the legal organ of the county at least once a week for three consecutive weeks immediately preceding the meeting at which the action is taken; and

(3) Such action shall not be taken during the period of time beginning with the date that candidates for election as members of the county governing authority may first qualify as such candidates and ending with the first day of January following the date of qualification.

(c) Salary, compensation, expenses, and expenses in the nature of compensation paid to members of a county governing authority in accordance with applicable local or general salary laws in effect on January 1, 2001, and as subsequently amended, shall continue in full force and effect as compensation for such county officials unless such compensation is increased pursuant to subsection (b) of this Code section; and this Code section shall not affect the power of the General Assembly at any time by local or general law to increase or decrease any or all of such compensation or by local law to withdraw the authority otherwise granted to a county governing authority under this Code section. (Code 1981, § 36-5-24, enacted by Ga. L. 2001, p. 789, § 1; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "of the county" for "for the county" in the middle of paragraph (b)(2).

CHAPTER 9

COUNTY PROPERTY GENERALLY

36-9-2. Control and disposal of county property generally.

JUDICIAL DECISIONS

Failure to comply with O.C.G.A. § 36-9-2 not a bar to bona fide purchaser's title. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide pur-

chaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373 (2012).

Heirs unable to repurchase because bona fide purchaser had purchased. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

CHAPTER 10

PUBLIC WORKS CONTRACTS

36-10-1. Contracts to be in writing and entered on minutes.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

ANALYSIS

ENFORCEABILITY OF CONTRACTS

Enforceability of Contracts

Ultra vires contract not enforceable under quantum meruit theory of recovery. — Appellate court erred by holding that an environmental engineering company could recover against a city on the company's quantum meruit claim because quantum meruit was not an available remedy against the city since the claim was based on a municipal contract that was ultra vires as the contract was never approved by city council. City of

Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

CHAPTER 11

CLAIMS AGAINST COUNTIES

36-11-1. Time for presentation of claims.

JUDICIAL DECISIONS

ANALYSIS

PRESENTATION OF CLAIMS
PROCEDURE

Presentation of Claims

Outside law firm not authorized to receive notice for county. — Trial court erred by ruling that there was substantial compliance with O.C.G.A. § 36-11-1 by plaintiffs sending notice of the plaintiff's suit against a county to a private law firm used by the county as outside legal counsel because the firm was not in-house or any department or official of a county and, thus, was not authorized to receive notice. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

Procedure

Time to submit claim.

Under O.C.G.A. § 36-11-1, all claims against counties must be presented within 12 months after the claims accrue or become payable or the claims are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348 (2012).

CHAPTER 12

SUPERVISION AND SUPPORT OF PAUPERS

Sec.
36-12-5. Interment or cremation of deceased indigents.

36-12-5. Interment or cremation of deceased indigents.

(a) Whenever any person dies in this state and the decedent, his or her family, and his or her immediate kindred are indigent and unable to provide for the decedent's decent interment or cremation, the governing authority of the county wherein the death occurs shall make available from county funds a sum sufficient to provide a decent interment or cremation of the deceased indigent person or to reimburse

such person as may have expended the cost thereof voluntarily, the exact amount thereof to be determined by the governing authority of the county but shall not exceed the lesser of the actual costs of interment or cremation.

(b) The Department of Corrections is authorized to reimburse the governing authority of the county where expenditures have been made in accordance with this Code section for the burial or cremation of any inmate under the authority, jurisdiction, or control of the Department of Corrections; but in no case shall the governing authority of the county be entitled to reimbursement where the decedent was in the custody of a county correctional institution or other county correctional facility. (Ga. L. 1863-64, p. 60, § 1; Code 1868, § 788; Code 1873, § 766; Code 1882, § 766; Civil Code 1895, § 441; Civil Code 1910, § 556; Code 1933, § 23-2304; Ga. L. 1967, p. 616, § 1; Ga. L. 1972, p. 971, § 1; Ga. L. 1974, p. 616, § 1; Ga. L. 1978, p. 1048, § 1; Ga. L. 1980, p. 722, § 1; Ga. L. 1982, p. 2107, § 34; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 265, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 431, §§ 1, 2; Ga. L. 2013, p. 669, § 1/SB 83.)

The 2013 amendment, effective July 1, 2013, inserted "or cremation" throughout this Code section; in subsection (a), twice inserted "or her", substituted "the decedent's decent" for "his decent", and inserted "but shall not exceed the lesser of the actual costs of interment or cremation" at the end.

Provisions Applicable to Municipal Corporations Only

CHAPTER 30

GENERAL PROVISIONS

Cross references. — Self authentication, § 24-9-902.

36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.

Law reviews. — For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-30-7. Authorization and procedure for surrender of corporate charter.

JUDICIAL DECISIONS

Cited in Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

CHAPTER 31

INCORPORATION OF MUNICIPAL CORPORATIONS

36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.

JUDICIAL DECISIONS

Cited in City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381 (2013).

CHAPTER 32

MUNICIPAL COURTS

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

36-32-9. Misdemeanor theft by shoplifting or misdemeanor refund fraud; transfer of cases; penalties; retention of fines and forfeitures; reports.

(a) The municipal court is granted jurisdiction to try and dispose of cases in which a person is charged with a misdemeanor theft by shoplifting or misdemeanor refund fraud if the offense occurred within the corporate limits of the municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any person charged in a municipal court with misdemeanor theft by shoplifting or misdemeanor refund fraud shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(c)(1) A person convicted in a municipal court of misdemeanor theft by shoplifting shall be punished as provided in paragraph (1) of subsection (b) of Code Section 16-8-14, provided that nothing in this Code section or Code Section 16-8-14 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(2) A person convicted in a municipal court of misdemeanor refund fraud shall be punished as provided in the misdemeanor penalties set forth in Code Section 16-8-14.1, provided that nothing in this Code section or Code Section 16-8-14.1 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(d) Any fines and forfeitures arising from the prosecution of such cases in such municipal court shall be retained by the municipality and shall be paid into the treasury of such municipality.

(e) It shall be the duty of the appropriate agencies of the municipality in which an offense under subsection (a) of this Code section is charged to make any reports to the Georgia Crime Information Center required under Article 2 of Chapter 3 of Title 35. (Code 1981, § 36-32-9, enacted by Ga. L. 1987, p. 1153, § 1; Ga. L. 1998, p. 188, § 1; Ga. L. 1999, p. 831, § 1; Ga. L. 2012, p. 899, § 8-14/HB 1176; Ga. L. 2014, p. 404, § 2-3/SB 382.)

The 2014 amendment, effective July 1, 2014, in subsections (a) and (b), inserted "or misdemeanor refund fraud"; redesignated the provisions of subsection

(c) as paragraph (c)(1); and added paragraph (c)(2).

Editor's notes. — Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; retention of fines and forfeitures; transfer of cases; penalties.

(a) The municipal courts are granted jurisdiction to try and dispose of a first offense violation of Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and forfeitures arising from the prosecution of such cases shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a first offense violation of Code Section 3-3-23 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted in a municipal court of a first offense violation of Code Section 3-3-23 shall be punished as provided in paragraph (1) of subsection (b) of Code Section 3-3-23.1, provided that nothing in this Code section or Code Section 3-3-23.1 shall be construed to give any municipal corporation the right to impose a fine or punishment in excess of the limits set forth in the charter of such municipal corporation.

(e) Nothing in this Code section shall affect the original and exclusive jurisdiction of the juvenile court as set forth in Code Section 15-11-10. (Code 1981, § 36-32-10, enacted by Ga. L. 1987, p. 1462, § 1; Ga. L. 2000, p. 20, § 22; Ga. L. 2013, p. 294, § 4-46/HB 242.)

The 2013 amendment, effective January 1, 2014, substituted "Code Section 15-11-10" for "Code Section 15-11-28" at the end of subsection (e). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring

before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

CHAPTER 33

LIABILITY OF MUNICIPAL CORPORATIONS FOR ACTS OR OMISSIONS

Sec.

36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.

JUDICIAL DECISIONS

Analysis

General Consideration

Waiver by purchase of liability insurance.

Although a fact issue existed as to whether a city had waived the city's sovereign immunity by purchasing insurance that covered an arrestee's claims arising from an arrest for burglary, the claims for slander, fraud, false imprisonment, and racketeering failed because there was probable cause to make the arrest. Gray v. Ector, No. 12-11323, 2013 U.S. App. LEXIS 19261 (11th Cir. Sept. 18, 2013) (Unpublished).

Liability for Ministerial Functions

Provision of medical care to inmate. — City's and police chief's provision of medical care to a diabetic inmate in their custody was a ministerial act and, because it was a ministerial act, sovereign immunity was waived pursuant to O.C.G.A. § 36-33-1(b). City of Atlanta v. Mitcham, 325 Ga. App. 481, 751 S.E.2d 598 (2013).

Failure to provide medical care to inmate. — In a negligence action filed by an inmate based on the city's and the police chief's failure to provide medical care to the inmate, because the provision of medical care to inmates in the city's and the police chief's custody was a ministerial act, as the duty was imposed by statute, and medical care was a fundamental right of inmates in custody, sovereign or governmental immunity was not applica-

ble, and the trial court did not err by denying the city's and the police chief's motion to dismiss for failure to state a claim based on sovereign immunity. City of Atlanta v. Mitcham, 2013 Ga. App. LEXIS 963 (Nov. 20, 2013).

Nuisances

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

Officers and Employees

Arrest.

When officers arrested a person who died shortly after the arrest, a city which employed one of the officers could not be held liable because: (1) the city was immune from claims involving police work unless the city waived that immunity; and (2) it was not shown that the city waived immunity. Hoyt v. Bacon County, No. 509-026, 2011 U.S. Dist. LEXIS 7330 (S.D. Ga. Jan. 26, 2011).

Sewers

Nuisance theory liability.

Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

36-33-2. Liability for failure to perform discretionary act.

JUDICIAL DECISIONS

Sewage back up. — Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721 (2013).

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172 (2013).

36-33-4. Personal liability of councilmembers and other municipal officers.

JUDICIAL DECISIONS

Immunity from liability.

City manager had official immunity in a defamation case under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 36-33-4 since: (1) the city finance director did not show that a statement the city manager made to the media regarding the city manager's concerns in the city finance director's department was outside the scope of the city manager's authority; (2) the city manager did not disclose anything to the city finance director's prospective

employer that the prospective employer did not obtain through a Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., request; and (3) there was no policy that prohibited the city manager from verbally responding in conjunction with the city manager's Open Records Act response. Smith v. Lott, 317 Ga. App. 37, 730 S.E.2d 663 (2012).

Appellate court erred by affirming the grant of the individual defendants' motion to dismiss in a personal injury suit involving a pedestrian falling at a high school because whether official immunity barred the action was a fact-specific inquiry that had not been definitively answered since limited discovery had been undertaken. Austin v. Clark, 294 Ga. 773, 755 S.E.2d 796 (2014).

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

(a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in this Code section.

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment.

(c) Upon the presentation of such claim, the governing authority shall consider and act upon the claim within 30 days from the presentation; and the action of the governing authority, unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in the courts.

(d) The running of the statute of limitations shall be suspended during the time that the demand for payment is pending before such authorities without action on their part.

(e) The description of the extent of the injury required in subsection (b) of this Code section shall include the specific amount of monetary damages being sought from the municipal corporation. The amount of monetary damages set forth in such claim shall constitute an offer of compromise. In the event such claim is not settled by the municipal corporation and the claimant litigates such claim, the amount of monetary damage set forth in such claim shall not be binding on the claimant.

(f) A claim submitted under this Code section shall be served upon the mayor or the chairperson of the city council or city commission, as the case may be, by delivering the claim to such official personally or by certified mail or statutory overnight delivery. (Ga. L. 1899, p. 74, § 1; Civil Code 1910, § 910; Code 1933, § 69-308; Ga. L. 1953, Ex. Sess., p. 338, § 1; Ga. L. 1956, p. 183, § 1; Ga. L. 2014, p. 125, § 1/HB 135.)

The 2014 amendment, effective July 1, 2014, deleted "subsection (b) of" preceding "this Code section" near the end of subsection (a) and added subsections (e) and (f).

Law reviews. — For note, "Taking a Toll on the Equities: Governing the Effect of the PLRA'S Exhaustion Requirements on State Statutes of Limitations," 47 Ga. L. Rev. 1321 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration
Procedure

General Consideration

Claim for attorney fees and costs. Firefighters' request for costs of litigation, including attorney fees, was properly submitted to the jury in the firefighters' class action, challenging a promotional examination, as the firefighters were not statutorily required to give ante-litem notice to the city. City of Atlanta v. Bennett, 322 Ga. App. 726, 746 S.E.2d 198 (2013).

Procedure

Necessity of alleging timely notice. That part of the holding in Dover v. City of Jackson, 246 Ga. App. 524 (2000), requiring an ante litem notice for a statutory claim for attorney fees and costs of litigation is overruled because it is contrary to the specific statutory language, which limits its applicability to claims brought "on account of injuries to person or property"; the holding also ignores the courts' duty to strictly construe the statute because it is in derogation of common law. Greater Atlanta Home Builders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 745 S.E.2d 830 (2013).

CHAPTER 35

HOME RULE POWERS

36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.

Law reviews. — For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

CHAPTER 37

ACQUISITION AND DISPOSITION OF REAL AND PERSONAL PROPERTY GENERALLY

36-37-6. Disposition of municipal property generally.

(a) Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such municipal corporation shall have the right to reject any and all bids or to cancel any proposed sale. The governing authority of the municipal corporation shall cause notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened. The provisions of this subsection shall not apply to any transactions authorized in subsections (b) through (j) of this Code section.

(b) The governing authority of any municipal corporation is authorized to sell personal property belonging to the municipal corporation which has an estimated value of $500.00 or less and lots from any municipal cemetery, regardless of value, without regard to subsection (a) of this Code section. Such sales may be made in the open market without advertisement and without the acceptance of bids. The estima-

tion of the value of any such personal property to be sold shall be in the sole and absolute discretion of the governing authorities of the municipal corporation or their designated agent.

(c) Nothing in this Code section shall prevent a municipal corporation from trading or exchanging real property belonging to the municipal corporation for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; provided, however, that within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the municipal corporation once a week for four weeks. The value of both the property belonging to the municipal corporation and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said municipal corporation.

(d) The governing authority of any municipal corporation is authorized to sell real property in established municipal industrial parks or in municipally designated industrial development areas for industrial development purposes without regard to subsection (a) or (b) of this Code section.

(e)(1) This Code section shall not apply to any municipal corporation which has a municipal charter provision setting forth procedures for the sale of municipal property and existing as of January 1, 1976, so long as such charter provision thereafter remains unchanged and as long as such charter provision contains the minimum notice requirements as set forth in subsection (a) of this Code section.

(2) This Code section shall not apply to the disposal of property:

(A) Which is acquired by deed of gift, will, or donation and is subject to such conditions as may be specified in the instrument giving or donating the property;

(B) Which is received from the United States government or from this state pursuant to a program which imposes conditions on the disposal of such property;

(C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the "Urban Redevelopment Law," or a homesteading program;

(D) Which is sold or transferred to another governing authority or government agency for public purposes; or

(E) Which is no longer needed for public road purposes and which is disposed of pursuant to Code Section 32-7-4.

(f) Notwithstanding any provision of this Code section or of any other law or any ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell real property within its corporate limits for museum purposes to either a public authority or a nonprofit corporation which is classified as a public foundation (not a private foundation) under the United States Internal Revenue Code, for the purpose of building, erecting, and operating thereon a museum or facility for the development or practice of the arts. Such sale may be made in the open market or by direct negotiations without advertisement and without the acceptance of bids. The estimation of the value of any property to be sold shall be in the sole and absolute discretion of the governing authority of the municipality or its designated agent; provided, however, that nothing shall prevent a municipality from trading or swapping property with another property owner if such trade or swap is deemed to be in the best interest of the municipality.

(g) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell and convey parcels of narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(h) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any municipal corporation determines that the establishment of a facility of the state or one of its authorities or other instrumentalities or of a bona fide nonprofit resource conservation and development council would be of benefit to the municipal corporation, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such municipal corporation may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities or to a bona fide nonprofit resource conservation and development council and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(i)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any municipality has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such municipality thereafter determines that all or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions, that municipality is authorized to dispose of such property or interest therein as provided in this subsection.

(3) In disposing of property, as authorized under this subsection, the municipality shall notify the owner of such property at the time of its acquisition or, if the tract from which the municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the municipality where the property is located.

(4) When an entire parcel acquired by the municipality or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the municipality decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the municipality shall proceed to sell such property as provided in subsection (a) of this Code section. The municipality shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(j)(1) As used in this subsection, the term:

(A) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(B) "Holder" shall have the same meaning as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, whenever the governing authority of any municipal corporation determines that the establishment of a conservation easement would be of benefit to the municipal corporation and to its citizens, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement may not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

(k)(1) Notwithstanding any provision of this Code section or any other law to the contrary, the General Assembly by local Act may authorize the governing authority of any municipal corporation to lease or enter into a contract for a valuable consideration for the operation and management, and renewals and extensions thereof, of any real or personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or other like property used primarily for recreational purposes for a period not to exceed five years to a nonprofit corporation which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant to use and operate the property for annual regional fair purposes or to continue the recreational purpose for which the property was formerly used and intended on a nondiscriminatory basis for the use and benefit of all citizens of the community; provided, however, that nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or that would cause the divesting of title to property dedicated to public use and not subsequently abandoned; and provided further, that the lessee or contractee under a management contract shall not mortgage or pledge the property as security for any debt or incur any encumbrance that could result in a lien or claim of lien against the property. The lease or management contract may provide for options to renew such lease or management contract for not more than three renewal periods and each such renewal period shall not be greater than the original length of such lease or management contract. As a condition of any lease or management contract, the lessee or contractee shall provide and maintain in force and effect throughout the term of such lease or management contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the

municipality as a named insured; shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of such person while on the property; and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by such person. As an additional condition of any such lease or management contract, the lessee or contractee shall provide to and maintain with the municipality a current copy of the liability insurance policy, including any changes in such policy or coverages as such changes occur, and shall provide proof monthly in writing to the municipality that the lessee or contractee has in force and effect the liability insurance required by this paragraph which the municipality shall retain on file. As a further condition of any lease or management contract, the lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvements to such property. When the lessee or contractee charges any person to enter or go upon the land for the purpose of attending the annual regional fair or for attending or participating in recreational purposes, the consideration received by the municipal corporation for the lease or management contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(2) Any governing authority entering into a lease as provided in paragraph (1) of this subsection shall have the right unilaterally to terminate such lease after giving three months' notice of its intention to do so.

(3) Any lease entered into as provided in paragraph (1) of this subsection shall be automatically terminated upon conviction of the lessee or contractee for any offense involving the conduct of unlawful activity. In such event, any improvements to the property made by the lessee shall be forfeited. The municipality shall not be liable in any manner or subject to suit for any indebtedness or other obligations of the lessee or contractee associated with any such improvements to the property and shall take such improvements free and clear of any such indebtedness or other obligations.

(l)(1) Where not otherwise authorized by its charter or other applicable law, the governing authority of any municipal corporation may lease or enter into a contract for valuable consideration for the use, operation, or management of any real or personal property of the municipal corporation pursuant to the power granted by this subsection. The authority of any municipal corporation granted pursuant to its charter or other applicable law to enter into leases or contracts for the use, operation, or management of any real or personal property of

the municipal corporation shall not be affected by this subsection and it shall not apply to any contracts or leases entered into pursuant to such authority. Where a municipal charter or other applicable law provides no authorization for leasing or contracting for the use, operation, or management of any real or personal property of the municipal corporation and this subsection is to be used as authorization for that purpose, the following shall apply:

(A) Any lease or contract for the use, operation, or management of any real or personal property for longer than 30 days shall be by sealed bids or by auction as provided in subsection (a) of this Code section. Easements and licenses for the use of municipal property in connection with construction projects of a municipal corporation shall be exempt from this subparagraph, provided that their term is less than one year;

(B) Nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or shall cause the divesting of title to property dedicated to public use and not subsequently abandoned; and

(C) The lessee or contractee shall not mortgage or pledge the property, lease or contract the property as security for any debt, or incur any encumbrance that could result in a lien or claim of lien against the property, lease, or contract.

(2) Any lease or contract for the use, operation, or management of any real or personal property entered into pursuant to this subsection and for longer than 30 days shall contain the following terms:

(A) The lessee or contractee shall provide and maintain in force in effect throughout the term of such lease or contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured;

(B) The lessee or contractee shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of any person while on the property and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by any person; and

(C) The lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvement to such property.

(3)(A) The initial term of a lease or contract for the use of real property entered into pursuant to this subsection shall be no longer

than five years and there may be one renewal period of no longer than five years, after which the lease or contract shall again be subject to sealed bids or auction.

(B) When the lessee or contractee charges any person to enter or go upon the real property for recreational purposes, the consideration received by the municipal corporation for the lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(C) Where real property is leased pursuant to this Code section for the erection of telecommunications towers, the initial term of a lease or contract for the use of such real property shall be no longer than ten years and there may be one renewal period of no longer than ten years, after which the lease or contract shall again be subject to sealed bids or auction; provided, however, that such lease shall also include provisions for the removal of the telecommunications tower structure.

(4) Where this subsection is applicable, it shall apply to any lease or contract entered into or renewed on or after July 1, 2011. This subsection shall not affect any provisions of subsection (k) of this Code section.

(5) Nothing contained in this Code section shall be construed so as to expand the powers of eminent domain or to otherwise provide for additional eminent domain authority for any municipal corporation. The ability for a governing authority of a municipal corporation to exercise eminent domain shall be subject to the limitations enumerated in Chapter 2 of Title 22 and the Georgia Constitution.

(m) Notwithstanding any other provision of law to the contrary, a city may exchange property dedicated as a city park with an institution owning property in or abutting a federal National Historic Site for use in connection with such property, provided that the city receives property in fee simple that is of equal or greater acreage as the city property exchanged and that the city immediately dedicates the property as a public park. (Code 1933, § 69-318, enacted by Ga. L. 1976, p. 350, § 1; Ga. L. 1978, p. 890, §§ 1, 2; Ga. L. 1981, p. 831, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 1051, § 2; Ga. L. 1989, p. 1418, § 1; Ga. L. 1990, p. 877, § 2; Ga. L. 1992, p. 1348, § 2; Ga. L. 1993, p. 795, § 1; Ga. L. 2001, p. 863, § 1; Ga. L. 2004, p. 1076, § 1; Ga. L. 2005, p. 60, § 36/HB 95; Ga. L. 2010, p. 1078, § 2/SB 390; Ga. L. 2011, p. 240, § 3A/HB 280; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 647, § 1A/HB 189.)

The 2013 amendment, effective July 1, 2013, added subsection (m).

CHAPTER 42

DOWNTOWN DEVELOPMENT AUTHORITIES

36-42-8. Powers of authorities generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans to finance projects, contracts with respect to the use of projects, and agreements to join or cooperate with an urban residential finance authority, created by the municipal corporation within which the downtown development area is located pursuant to the provisions of Chapter 41 of this title, in the exercise, either jointly or otherwise, of any or all of its powers for the purpose of financing, including the issuance of revenue bonds, notes, or other obligations of the authorities, planning, undertaking, owning, constructing, operating, or contracting with respect to any projects located within the downtown development area or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partner-

ships (whether limited or general), or other entities, all of which the authority is authorized to receive, accept, and use;

(6) To borrow money to further or carry out its public purpose and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;

(7) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(8) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the authority's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(9) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the authority;

(10) To contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation or county of this state for the use by the authority of any facilities or services of the state or any such state institution, municipal corporation, or county, or for the use by any state institution or any municipal corporation or county of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such political subdivision with which the authority contracts are authorized by law to undertake;

(11) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements,

assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the authority may deem necessary or desirable;

(12) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority (including, but not limited to, real property, fixtures, personal property, and revenues or other funds) and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes, or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and use the proceeds of any tax levied by a municipal corporation to pay the costs of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(14) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(15) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease,

exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the authority and the public purpose thereof;

(16) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(17) To appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(18) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the municipal corporation within which the downtown development area is located;

(19) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(20) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(21) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(22) To serve as an urban redevelopment agency pursuant to Chapter 61 of this title;

(23) To contract with a municipal corporation to carry out supplemental services in a city business improvement district established pursuant to Chapter 43 of this title; and

(24) To serve as a redevelopment agency pursuant to Chapter 44 of this title.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain. (Ga. L. 1981, p.

1744, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 902, § 1; Ga. L. 1988, p. 1463, § 2; Ga. L. 1992, p. 2533, § 3; Ga. L. 2006, p. 39, § 19/HB 1313; Ga. L. 2013, p. 746, § 1/SB 242.)

The 2013 amendment, effective May 6, 2013, added "or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation" at the end of paragraph (a)(3).

CHAPTER 44

REDEVELOPMENT POWERS

Sec.
36-44-3. Definitions.

36-44-2. Legislative findings and purpose.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-44-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem property taxes" means all ad valorem property taxes levied by each political subdivision and each county and independent board of education consenting to the inclusion of that board of education's property taxes as being applicable to a tax allocation district as provided by Code Section 36-44-9, except:

(A) Those ad valorem property taxes levied to repay bonded indebtedness;

(B) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on personal property or on motor vehicles; and

(C) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on the assessed value of property owned by public utilities and railroad companies, as determined pursuant to the provisions of Chapter 5 of Title 48.

(2) "Area of operation" means, in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. "Area of operation" may also mean the combined areas of operation of political subdivisions which participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.

(3) "Local legislative body" means the official or body in which the legislative powers of a political subdivision are vested.

(4) "Political subdivision" means any county, municipality, or consolidated government of this state.

(5) "Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

(A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;

(D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;

(E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;

(F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;

(G) The construction, installation, preservation, renovation, rehabilitation, reconstruction, restoration, alteration, improvement, and maintenance of public art and arts and cultural facilities;

(H) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;

(I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;

(J) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;

(K) Improving or increasing the value of property; and

(L) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

(7) "Redevelopment area" means an urbanized area as determined by current data from the United States Bureau of the Census or an area presently served by sewer that qualifies as a "blighted or distressed area," a "deteriorating area," or an "area with inadequate infrastructure," as follows:

(A) A "blighted or distressed area" is an area that is experiencing one or more conditions of blight as evidenced by:

(i) The presence of structures, buildings, or improvements that by reason of dilapidation; deterioration; age; obsolescence; inadequate provision for ventilation, light, air, sanitation, or open space; overcrowding; conditions which endanger life or property by fire or other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and are detrimental to the public health, safety, morals, or welfare;

(ii) The presence of a predominant number of substandard, vacant, deteriorated, or deteriorating structures; the predominance of a defective or inadequate street layout or transportation

facilities; or faulty lot layout in relation to size, accessibility, or usefulness;

(iii) Evidence of pervasive poverty, defined as being greater than 10 percent of the population in the area as determined by current data from the United States Bureau of the Census, and an unemployment rate that is 10 percent higher than the state average;

(iv) Adverse effects of airport or transportation related noise or environmental contamination or degradation or other adverse environmental factors that the political subdivision has determined to be impairing the redevelopment of the area; or

(v) The existence of conditions through any combination of the foregoing that substantially impair the sound growth of the community and retard the provision of housing accommodations or employment opportunities;

(B) A "deteriorating area" is an area that is experiencing physical or economic decline or stagnation as evidenced by two or more of the following:

(i) The presence of a substantial number of structures or buildings that are 40 years old or older and have no historic significance;

(ii) High commercial or residential vacancies compared to the political subdivision as a whole;

(iii) The predominance of structures or buildings of relatively low value compared to the value of structures or buildings in the surrounding vicinity or significantly slower growth in the property tax digest than is occurring in the political subdivision as a whole;

(iv) Declining or stagnant rents or sales prices compared to the political subdivision as a whole;

(v) In areas where housing exists at present or is determined by the political subdivision to be appropriate after redevelopment, there exists a shortage of safe, decent housing that is not substandard and that is affordable for persons of low and moderate income; or

(vi) Deteriorating or inadequate utility, transportation, or transit infrastructure; and

(C) An "area with inadequate infrastructure" means an area characterized by:

(i) Deteriorating or inadequate parking, roadways, bridges, pedestrian access, or public transportation or transit facilities

incapable of handling the volume of traffic into or through the area, either at present or following redevelopment; or

(ii) Deteriorating or inadequate utility infrastructure either at present or following redevelopment.

(8) "Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

(A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to those relocation payments made following condemnation under Chapter 4 of Title

22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

(9) "Redevelopment plan" means a written plan of redevelopment for a redevelopment area or a designated portion thereof which:

(A) Specifies the boundaries of the proposed redevelopment area;

(B) Explains the grounds for a finding by the local legislative body that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan;

(C) Explains the proposed uses after redevelopment of real property within the redevelopment area;

(D) Describes any redevelopment projects within the redevelopment area proposed to be authorized by the redevelopment plan, estimates the cost thereof, and explains the proposed method of financing such projects;

(E) Describes any contracts, agreements, or other instruments creating an obligation for more than one year which are proposed to be entered into by the political subdivision or its redevelopment agency or both for the purpose of implementing the redevelopment plan;

(F) Describes the type of relocation payments proposed to be authorized by the redevelopment plan;

(G) Includes a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the political subdivision or explains any exceptions thereto;

(H) Estimates redevelopment costs to be incurred or made during the course of implementing the redevelopment plan;

(I) Recites the last known assessed valuation of the redevelopment area and the estimated assessed valuation after redevelopment;

(J) Provides that property which is to be redeveloped under the plan and which is either designated as a historic property under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal agency to be eligible for listing on the National Register of Historic Places will not be:

(i) Substantially altered in any way inconsistent with technical standards for rehabilitation; or

(ii) Demolished unless feasibility for reuse has been evaluated based on technical standards for the review of historic preservation projects,

which technical standards for rehabilitation and review shall be those used by the state historic preservation officer, although nothing in this subparagraph shall be construed to require approval of a redevelopment plan or any part thereof by the state historic preservation officer;

(K) Specifies the proposed effective date for the creation of the tax allocation district and the proposed termination date;

(L) Contains a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property in the proposed tax allocation district;

(M) Specifies the estimated tax allocation increment base of the proposed tax allocation district;

(N) Specifies ad valorem property taxes for computing tax allocation increments determined in accordance with Code Section 36-44-9 and supported by any resolution required under paragraph (3) of Code Section 36-44-8;

(O) Specifies the amount of the proposed tax allocation bond issue or issues and the term and assumed rate of interest applicable thereto;

(P) Estimates positive tax allocation increments for the period covered by the term of the proposed tax allocation bonds;

(Q) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(R) If the plan proposes to include in the tax allocation increment ad valorem taxes levied by a board of education, the plan shall contain a school system impact analysis addressing the financial and operational impact on the school system of the proposed redevelopment, including but not limited to an estimate of the number of net new public school students that could be anticipated as redevelopment occurs; the location of school facilities within the proposed redevelopment area; an estimate of educational special purpose local option sales taxes projected to be generated by the proposed redevelopment, if any; and a projection of the average value of residential properties resulting from redevelopment compared to current property values in the redevelopment area; and

(S) Includes such other information as may be required by resolution of the political subdivision whose area of operation includes the proposed redevelopment area.

(10) "Resolution" means a resolution or ordinance by which a local legislative body takes official legislative action and any duly adopted amendment thereto.

(11) "Special fund" means the fund provided for in subsection (c) of Code Section 36-44-11.

(12) "Tax allocation bonds" means one or more series of bonds, notes, or other obligations issued by a political subdivision to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20. Tax allocation bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

(13) "Tax allocation district" means a contiguous geographic area within a redevelopment area which is defined and created by resolution of the local legislative body of a political subdivision pursuant to

subparagraph (B) of paragraph (3) of Code Section 36-44-8 for the purpose of issuing tax allocation bonds to finance, wholly or partly, redevelopment costs within the area.

(14) "Tax allocation increment" means that amount obtained by multiplying the total ad valorem property taxes, determined as provided in Code Section 36-44-9, levied within a tax allocation district in any year by a fraction having a numerator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district minus the tax allocation increment base and a denominator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district. In any year, a tax allocation increment is "positive" if the tax allocation increment base is less than that year's taxable value of all taxable property subject to ad valorem property taxes and "negative" if such base exceeds such taxable value.

(15) "Tax allocation increment base" means the taxable value of all taxable property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within a tax allocation district on the effective date such district is created pursuant to Code Section 36-44-8.

(16) "Taxable property" means all real and personal property subject to ad valorem taxation by a political subdivision, including property subject to local ad valorem taxation for educational purposes.

(17) "Taxable value" means the current assessed value of taxable property as shown on the tax digest of the county in which the property is located. (Code 1981, § 36-44-3, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2010, p. 878, § 36/HB 1387; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 141, § 36/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "United States Bureau of the Census" for "U.S. Bureau of the Census" in paragraph (7); and revised punctuation in paragraph (10).

36-44-9. Computing tax allocation increments; property tax included; use of tax funds.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allo-

cation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

Provisions Applicable to Counties and Municipal Corporations

CHAPTER 60

GENERAL PROVISIONS

36-60-3. Restriction of adult bookstores and movie houses to certain areas.

Law reviews. — For article, "Evil Angel Eulogy: Reflections on the Passing of the Obscenity Defense in Copyright," see 20 J. Intell. Prop. L. 209 (2013).

36-60-6. Utilization of federal work authorization program; "employee" defined; issuance of license; evidence of state licensure; annual reporting; standardized form affidavit; violation; investigations.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) For purposes of this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the

county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d)(1) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(2) Upon satisfying the requirements of paragraph (1) of this subsection, for all subsequent renewals of a business license, occupation tax certificate, or other document, the person shall submit to the county or municipality his or her federal work authorization user number or assert that he or she is exempt from this requirement, provided that the federal work authorization user number provided for the renewal is the same federal work authorization user number as provided in the affidavit under paragraph (1) of this subsection. If the federal work authorization user number is different than the federal work authorization user number provided in the affidavit under paragraph (1) of this subsection, then the person shall be subject to the requirements of subsection (g) of this Code section.

(e) Counties and municipal corporations subject to the requirements of this Code section shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this Code section. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which shall be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section. (Code 1981, § 36-60-6, enacted by Ga. L. 1992, p. 1553, § 1; Ga. L. 2011, p. 794, § 12/HB 87; Ga. L. 2013, p. 111, § 4/SB 160.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of subsection (d) as paragraph (d)(1); deleted "or renews" following "corporation

issues" near the beginning of the first sentence of paragraph (d)(1); added paragraph (d)(2); substituted the present provisions of subsection (e) for the former provisions, which read: "Beginning December 31, 2012, and annually thereafter, any county or municipal corporation issuing or renewing a business license, occupational tax certificate, or other document required to operate a business shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions of this Code section. This annual report shall identify each license or certificate issued by the agency in the preceding 12 months and include the name of the person and business issued a license or other document and his or her federally assigned employment eligibility verification system user number as provided in the affidavit submitted at the time of application. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies."; and substituted "affidavit which shall" for "affidavit which may" in the middle of the first sentence of subsection (f).

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

36-60-13. Multiyear lease, purchase, or lease-purchase contracts.

(a) Each county or municipality in this state shall be authorized to enter into multiyear lease, purchase, or lease-purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the county or municipality to terminate such contract, and the nature of such action shall be determined by the county or municipality and specified in the contract;

(3) The contract shall state the total obligation of the county or municipality for the calendar or fiscal year of execution and shall further state the total obligation which will be incurred in each calendar or fiscal year renewal term, if renewed; and

(4) The contract shall provide that title to any supplies, materials, equipment, or other personal property shall remain in the vendor until fully paid for by the county or municipality.

(b) In addition to the provisions enumerated in subsection (a) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county or municipality under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the county or municipality.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the county or municipality only for those sums payable during the calendar or fiscal year of execution or, in the event of a renewal by the county or municipality, for those sums payable in the individual calendar or fiscal year renewal term.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the county or municipality for the payment of any sum beyond the calendar or fiscal year of execution or, in the event of a renewal, beyond the calendar or fiscal year of such renewal.

(e) No contract developed and executed pursuant to this Code section may be delivered if the principal portion of such contract, when added to the amount of debt incurred by any county or municipality pursuant to Article IX, Section V, Paragraph I of the Constitution of Georgia, exceeds 10 percent of the assessed value of all taxable property within such county or municipality.

(f) No contract developed and executed pursuant to this Code section may be delivered if the real or personal property being so financed has been the subject of a referendum which failed to receive the approval of the voters of the county or municipality within the immediately preceding four calendar years, unless such real or personal property is required to be financed pursuant to a federal or state court order, or imminent threat thereof, as certified by the governing authority of the county or municipality.

(g) No contract developed and executed pursuant to this Code section with respect to the acquisition of real property may be delivered unless a public hearing has been held by the county or municipality after two weeks' notice published in a newspaper of general circulation within the county or municipality.

(h)(1) On or after July 1, 2000, no contract developed and executed or renewed, refinanced, or restructured pursuant to this Code section with respect to real property may be delivered if the lesser of either of the following is exceeded:

(A) The average annual payments on the aggregate of all such outstanding contracts exceed 7.5 percent of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such contract plus any available special county 1 percent sales and use tax proceeds collected pursuant to Code Section 48-8-111; or

(B) The outstanding principal balance on the aggregate of all such outstanding contracts exceeds $25 million; provided, however, that with respect to any county or municipality in which, prior to July 1, 2000, the outstanding principal balance on the aggregate of outstanding contracts exceeds $25 million, such outstanding contracts may be renewed, refinanced, or restructured, but no new contracts shall be developed and executed until the outstanding principal balance on such outstanding contracts has been reduced so that the $25 million limitation of this subparagraph, or the limitation in subparagraph (A) of this paragraph, whichever is lower, is not exceeded.

(2) Paragraph (1) of this subsection shall not apply to contracts developed and executed or renewed, refinanced, or restructured pursuant to this Code section which are for projects or facilities:

(A) For the housing of court services, where any other state law or laws authorize the project or facility to be financed and paid for from the collection of fines rather than from tax revenues; or

(B) Which have been previously approved in the most recent referendum calling for the levy of a special county 1 percent sales and use tax pursuant to Part 1 of Article 3 of Chapter 8 of Title 48.

(i) Any such contract may provide for the payment by the county or municipality of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(j) Nothing in this Code section shall restrict counties or municipalities from executing reasonable contracts arising out of their proprietary functions. (Code 1981, § 36-60-13, enacted by Ga. L. 1988, p. 1954, § 1; Ga. L. 1996, p. 441, § 1; Ga. L. 2000, p. 1443, § 1; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 272, § 1/HB 473.)

The 2013 amendment, effective July 1, 2013, inserted "or fiscal" throughout subsections (a), (c), and (d).

CHAPTER 61

URBAN REDEVELOPMENT

36-61-9. Power of eminent domain; conditions; title acquired.

JUDICIAL DECISIONS

Not applicable to conveyance of previously condemned property. — Even assuming the original condemnation proceeding was conducted pursuant to the Urban Redevelopment Law and that O.C.G.A. § 36-61-9 was applicable to it, the 2003 conveyance was not a re-taking by a municipality or county and thus the transaction was not governed by the requirements of § 36-61-9. By its terms, the statute applies to the original taking of property by eminent domain. The 2003 conveyance was, instead, a re-purposing of the property from that involved in the original taking. Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347 (2014).

CHAPTER 62

DEVELOPMENT AUTHORITIES

36-62-1. Short title.

JUDICIAL DECISIONS

Cited in Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-3. Constitutional authority for chapter; finding of public purposes; tax exemption.

JUDICIAL DECISIONS

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

36-62-7. Operation of project by governmental units prohibited; sale or lease of property for operation.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the

valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., No. A12A0587, 2012 Ga. App. LEXIS 624 (July 5, 2012).

36-62-8. Obligations of authority; use of proceeds; status as revenue obligations; subsequent series of bonds or notes; bond anticipation notes; interest rates; issuance and validation.

JUDICIAL DECISIONS

Validation order insufficient. — Because a revenue bond validation order contained merely a dry recitation that certain legal requirements had been met, adequate appellate review of the trial court's decision making process was effectively prevented; the validation order did not specifically address a resident's objection that the transaction did not comply with the Development Authorities Law, O.C.G.A. § 36-62-8(b), or the process by which the court came to the court's conclusion that the proposed transaction followed all proper and necessary steps. Sherman v. Dev. Auth., No. A12A0587, 2012 Ga. App. LEXIS 624 (July 5, 2012).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., No. A12A0587, 2012 Ga. App. LEXIS 624 (July 5, 2012).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

CHAPTER 66

ZONING PROCEDURES

36-66-3. Definitions.

JUDICIAL DECISIONS

"Zoning decision" construed.

Letter from a county to a developer advising that proposals would be considered under an amended ordinance limiting the development of private sewer systems was not a "decision" of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; there-

fore, the developer's claim of inverse condemnation never ripened. Mortgage Alliance Corp. v. Pickens County, 294 Ga. 212, 751 S.E.2d 51 (2013).

CHAPTER 66B

MOBILE BROADBAND INFRASTRUCTURE LEADS TO DEVELOPMENT

36-66B-1. Short title.

This chapter shall be known and may be cited as the "Mobile Broadband Infrastructure Leads to Development (BILD) Act." (Code 1981, § 36-66B-1, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "'Mobile Broadband Infrastructure Leads to Development (BILD) Act'" for "'Advanced Broadband Collocation Act'".

36-66B-2. Legislative findings and intent.

(a) The General Assembly finds that the enactment of this chapter is necessary to:

(1) Ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout this state;

(2) Ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare;

(3) Encourage where feasible the modification or collocation of wireless facilities on existing wireless support structures over the construction of new wireless support structures in the deployment or expansion of commercial wireless networks; and

(4) Allow the deployment of critical wireless infrastructure to ensure that first responders can provide for the health and safety of all residents of Georgia.

(b) While recognizing and confirming the purview of local governments to exercise zoning, land use, and permitting authority within their territorial boundaries with regard to the location, construction, and modification of wireless communication facilities, it is the intent of this chapter to establish procedural standards for the exercise of such authority so as to streamline and facilitate the construction, collocation, or modification of such facilities, including the placement of new or additional wireless facilities on existing wireless support structures. It is not the intent of this chapter to limit or preempt the scope of a local government's review of zoning, land use, or permitting applications for the siting of wireless facilities or wireless support structures or to require a local government to exercise its zoning power. (Code 1981, § 36-66B-2, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, in subsection (a), deleted "and" from the end of paragraph (a)(2), substituted "; and" for a period at the end of paragraph (a)(3), and added paragraph (a)(4); and inserted "construction, collocation, or" near the middle of the first sentence of subsection (b).

36-66B-3. Definitions.

As used in this chapter, the term:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.

(2) "Antenna" means communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

(3) "Application" means a formal request submitted to the local governing authority to construct, collocate, or modify a wireless support structure or a wireless facility.

(4) "Collocate" or "collocation" means the placement or installation of new wireless facilities on previously approved and constructed wireless support structures, including monopoles and towers, both self-supporting and guyed, in a manner that negates the need to construct a new freestanding wireless support structure. Such term includes the placement of accessory equipment within an existing equipment compound.

(5) "Complete application" means an application containing all documents, information, and fees specifically enumerated in or required by the local governing authority's regulations, ordinances, and

forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(6) "Equipment compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

(7) "Local governing authority" means a municipality or county that has adopted land use or zoning regulations for all or the majority of land uses within its jurisdiction or has adopted separate regulations pertaining to the location, construction, collocation, modification, or operation of wireless facilities.

(8) "Modification" or "modify" means the improvement, upgrade, expansion, or replacement of existing wireless facilities on an existing wireless support structure or within an existing equipment compound, provided such improvement, upgrade, expansion, or replacement does not increase the height of the wireless support structure or increase the dimensions of the equipment compound.

(9) "Registry" means any official list, record, or register maintained by a local governing authority of wireless facilities, equipment compounds, or wireless support structures.

(10) "Utility" means any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.

(11) "Wireless facility" means the set of equipment and network components, exclusive of the underlying wireless support structure, including antennas, transmitters, receivers, base stations, power supplies, cabling, and accessory equipment, used to provide wireless data and wireless telecommunication services.

(12) "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service. (Code 1981, § 36-66B-3, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, inserted "transmits, receives, or" near the beginning of paragraph (2); in paragraph (3), substituted "collocate" for "collate" in the first sentence and deleted the former second sentence, which read: "An application shall be deemed complete when all documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, modification, or operation of wireless facilities are submitted by the applicant to the authority."; substituted "'Collocate' or 'collocation'" for "'Collocation'" at the beginning of para-

graph (4); added paragraph (5); redesignated former paragraphs (5) through (7) as present paragraphs (6) through (8), respectively; inserted "collocation," in paragraph (7); added paragraphs (9) and (10); redesignated former paragraphs (8) and (9) as present paragraphs (11) and (12), respectively; inserted "wireless" preceding "telecommunication" near the end of paragraph (11); and, in paragraph (12), substituted "any telephone or electrical utility pole or any tower" for "any electrical utility pole or tower" in the second sentence.

36-66B-4. Streamlined processing.

(a) Applications for collocation or modification of a wireless facility entitled to streamlined processing under this Code section shall be reviewed for conformance with applicable site plan and building permit requirements, including zoning and land use conformity, but shall not otherwise be subject to the issuance of additional zoning, land use, or special use permit approvals beyond the initial zoning, land use, or special permit approvals issued for such wireless support structure or wireless facility. The intent of this Code section is to allow previously approved wireless support structures and wireless facilities to be modified or collocations thereto to be accepted without additional zoning or land use review beyond that which is typically required by the local governing authority for the issuance of building or electrical permits.

(b) The streamlined process set forth in subsection (a) of this Code section shall apply to applications for proposed modifications and to applications for proposed collocations that meet the following requirements:

(1) The proposed modification or collocation shall not increase the overall height or width of the wireless support structure to which the wireless facilities are to be attached;

(2) The proposed modification or collocation shall not increase the dimensions of the equipment compound initially approved by the local governing authority;

(3) The proposed modification or collocation shall comply with applicable conditions of approval, if any, applied to the initial wireless facilities and wireless support structure, as well as any subsequently adopted amendments to such conditions of approval; and

(4) The proposed modification or collocation shall not exceed the applicable weight limits for the wireless support structure, as demonstrated by a letter from a structural engineer licensed to practice in this state.

(c) A local governing authority's review of an application to modify or collocate wireless facilities on an existing wireless support structure shall not include an evaluation of the technical, business, or service

characteristics of such proposed wireless facilities. A local governing authority shall not require an applicant to submit radio frequency analyses or any other documentation intended to demonstrate the proposed service characteristics of the proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify the business decision to collocate such wireless facilities; provided, however, that the local governing authority may require the applicant to provide a letter from a radio frequency engineer certifying the applicant's proposed wireless facilities will not interfere with public safety emergency communications.

(d) Within 90 calendar days of the date an application for modification or collocation of wireless facilities is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(e) Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in subsection (d) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-4, enacted by Ga. L. 2010, p. 328, § 1/SB 432; Ga. L. 2014, p. 413, § 1/HB 176.)

The 2014 amendment, effective July 1, 2014, substituted "modified or collocations thereto to be accepted" for "modified or accept collocations" in the second sentence of subsection (a); substituted "proposed modifications and to applications for proposed" for "all modifications and to applications for all proposed" in the introductory paragraph of subsection (b); inserted "modification or" throughout paragraphs (b)(1) through (b)(4); inserted "initially" in paragraph (b)(2); inserted "public safety" near the end of the last sentence of subsection (c); and, in subsection (e), in the first sentence, inserted "determine if it is a complete application and, if it determines the application is not a complete application", substituted "such application" for "the application" near the end, and added the last sentence.

36-66B-5. Time limitations for review of application for new wireless facilities or support structure.

(a) Within 150 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

(1) Make its final decision to approve or disapprove the application; and

(2) Advise the applicant in writing of its final decision.

(b) Within 30 calendar days of the date an application for a new wireless support structure is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the calendar day review period set forth in subsection (a) of this Code section. Information requested to complete the application may only include the documents, information, and fees specifically enumerated in the local governing authority's existing regulations, ordinances, and forms pertaining to the location, construction, collocation, modification, or operation of wireless facilities. (Code 1981, § 36-66B-5, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-6. Limitations on local regulations.

In the regulation of the placement or construction of any new wireless facility or wireless support structure, a local governing authority shall not:

(1) Condition the approval of any application for a new wireless support structure on a requirement that a modification or collocation to such structure be subject to a review that is inconsistent with the requirements of Code Section 36-66B-4;

(2) Require the removal of existing wireless support structures or wireless facilities as a condition to approval of an application for a new wireless facility or wireless support structure unless such existing wireless support structure or wireless facility is abandoned and owned by the applicant; or

(3) Require the applicant to place an antenna or other wireless communications equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant. (Code 1981, § 36-66B-6, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

36-66B-7. Limitations on local fees charged.

A local governing authority shall not:

(1) Charge an applicant a zoning, permitting, or other fee for review or inspection of a new or existing wireless facility or wireless support structure in an amount greater than the amount authorized by subsection (a) of Code Section 48-13-9;

(2) Charge an applicant a zoning, permitting, or other fee for review or inspection of a collocation or modification in excess of $500.00;

(3) Seek reimbursement from the applicant for any application fees, consultation fees, registry fees, or audit fees with respect to a wireless facility or wireless support structure that are based on a contingency fee arrangement; or

(4) Charge a wireless service provider or wireless infrastructure provider any rental, license, or other fees in excess of the fair market value for rental or use of similarly situated property to renew or extend the term of a lease or other agreement for a wireless facility or wireless support structure on such local governing authority's property. (Code 1981, § 36-66B-7, enacted by Ga. L. 2014, p. 413, § 1/HB 176.)

Effective date. — This Code section became effective July 1, 2014.

CHAPTER 67A

CONFLICT OF INTEREST IN ZONING ACTIONS

36-67A-2. Disclosure of financial interests.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

36-67A-4. Penalties.

JUDICIAL DECISIONS

Statute of limitations. — Because the tolling exception to the statute of limitation applied to the failure to disclose a financial interest charge, and the prosecution for that charge was timely commenced after the crime was discovered, the trial court did not err by denying the defendant's plea in bar based on the expiration of the statute of limitation. Kenerly v. State, 325 Ga. App. 412, 750 S.E.2d 822 (2013).

CHAPTER 70

COORDINATED AND COMPREHENSIVE PLANNING AND SERVICE DELIVERY BY COUNTIES AND MUNICIPALITIES

ARTICLE 2

SERVICE DELIVERY

36-70-20. Legislative intent.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery pro-

ceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-23. Required components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-25.1. Dispute resolution procedures.

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-26. Required filing; verification of components.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-27. Limitation of funding for projects inconsistent with strategy.

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

36-70-28. "Affected municipality" defined; review and revision of strategy.

JUDICIAL DECISIONS

Jurisdiction. — When consent decrees were issued in an environmental suit against a city, and a municipality's incorporation led to service delivery proceedings in state court ten years later, the federal court lacked jurisdiction to enjoin the parties from pursuing the service delivery proceedings in state court under Georgia's Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., because the "in aid of its jurisdiction" exception in the Anti-Injunction Act did not apply, and the federal court lacked supplemental jurisdiction over the state service delivery proceeding issues under 28 U.S.C. § 1367. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 701 F.3d 669 (11th Cir. 2012).

CHAPTER 76

EXPEDITED FRANCHISING OF CABLE AND VIDEO SERVICES

36-76-6. Franchise fees.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

Provisions Applicable to Counties, Municipal Corporations, and Other Governmental Entities

---

CHAPTER 80

GENERAL PROVISIONS

Sec.
36-80-21. Definitions; electronic transmission of budgets.
36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

36-80-5. Relief from or composition of debts under federal statute prohibited.

JUDICIAL DECISIONS

Bankruptcy. — Debtor, a Georgia county hospital authority, was ineligible for Chapter 9 relief because the State of Georgia, pursuant to O.C.G.A. § 36-80-5(a), had not specifically authorized the authority to file for relief under Chapter 9. United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

36-80-17. Authorization to contract for utility services; conditions and limitations.

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

36-80-21. Definitions; electronic transmission of budgets.

(a) As used in this Code section, the term:

(1) "Audit" means an annual report of the financial affairs and transactions of a county, municipality, or consolidated government as required by Code Section 36-81-7 and an annual report of a school district as required by rule and regulation of the State Board of Education.

(2) "Budget" means:

(A) A plan of financial operation embodying an estimate of proposed expenditures during a budget period and the proposed means of financing such expenditures for a county, municipality, or consolidated government as required by Article 1 of Chapter 81 of this title and such plans of financial operation for the general fund, each special revenue fund, each debt service fund, each internal service fund, each enterprise fund, and each fiduciary fund in use by such unit of local government as such funds are defined in Code Section 36-81-2; and

(B) A plan of financial operation of a school district as required by rule and regulation of the State Board of Education and Code Section 20-2-67.

(3) "Local government" means any local school board or a governing authority of a county or municipality having an annual budget in excess of $1 million.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

(5) "Website" means a website which shall be developed, operated, and maintained by the Vinson Institute that shall allow the public to review and analyze the information identified in subsections (c) and (d) of this Code section at no cost to the public or the local governments that post to the website.

(b) Each local government shall post the information required by this Code section to the website for each fiscal year beginning on and after January 1, 2011.

(c) As soon as a local government has adopted, by ordinance or resolution, a final budget for an upcoming fiscal year, a copy of the budget shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. In no event shall the PDF copy of the budget be transmitted to the Vinson Institute more than 30 calendar days following the adoption of the budget ordinance or resolution.

(d) After the close of a fiscal year, a copy of the audit of each local government shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable. The PDF copy of the audit of a county, municipality, or consolidated government shall be transmitted to the Vinson Institute concurrent with submission of the audit to the state auditor as required by subsection (d) of Code Section 36-81-7. The audit of a school district shall be transmitted to the Vinson Institute concurrent with submission of the audit to the State Board of Education as required by rule and regulation of the State Board of Education.

(e) Concurrent with the submission of the annual report by local law enforcement agencies required by division (u)(4)(D)(iii) of Code Section 16-13-49, a copy of such report shall be electronically transmitted in a Portable Document Format (PDF) file to the Vinson Institute and posted on the website by the Vinson Institute as soon as practicable.

(f) The Vinson Institute shall, subject to appropriation by the General Assembly, develop the website for use by local governments under this Code section and provide all necessary training for local government officials in its operation in order to allow local governments to upload the information required by this Code section on a timely basis at no cost to such local governments. (Code 1981, § 36-80-21, enacted by Ga. L. 2010, p. 519, § 1/HB 122; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2014, p. 866, § 36/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 20-2-67" for "paragraph (3) of subsection (a) of Code Section 20-2-167" in subparagraph (a)(2)(B).

36-80-23. Prohibition on immigration sanctuary policies by local governmental entities; certification of compliance.

(a) As used in this Code section, the term:

(1) "Federal officials or law enforcement officers" means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) "Immigration status" means the legality or illegality of an individual's presence in the United States as determined by federal law.

(3) "Immigration status information" means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-4-10 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) "Local governing body" means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, or political subdivision.

(5) "Local official or employee" means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) "Sanctuary policy" means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state adminis-

tered federal funding other than funds to provide services specified in subsection (d) of Code Section 50-36-1.

(d) The Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies may require certification of compliance with this Code section as a condition of funding. (Code 1981, § 36-80-23, enacted by Ga. L. 2009, p. 734, § 1/SB 20; Ga. L. 2013, p. 111, § 5/SB 160.)

The 2013 amendment, effective July 1, 2013, substituted "subsection (d) of Code Section 50-36-1" for "subsection (c) of Code Section 50-36-1" at the end of subsection (c).

Editor's notes. — Ga. L. 2013, p. 111, § 2/SB 160, not codified by the General Assembly, provides that: "It is the intent of the General Assembly that all public employers and contractors at every tier and level use the federal work authorization program on all projects, jobs, and work resulting from any bid or contract and that every public employer and contractor working for a public employer take all possible steps to ensure that a legal and eligible workforce is utilized in accordance with federal immigration and employment."

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

CHAPTER 81

BUDGETS AND AUDITS

Article 1

Local Government Budgets and Audits

Sec.
36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

ARTICLE 1

LOCAL GOVERNMENT BUDGETS AND AUDITS

36-81-8.1. Definitions; grant certification forms; filing with state auditor; forfeiture of funds for noncompliance; no exemption from liability.

(a) As used in this Code section, the term:

(1) "Subrecipient" means an entity that receives a grant of state funds from the Governor's emergency fund or from a special project appropriation through a local government and shall also mean an entity which in turn receives all or any portion of such grant funds from a subrecipient.

(2) "Unit of local government" means, for purposes of this Code section and notwithstanding paragraph (16) of Code Section 36-81-2, a:

(A) Municipality, county, consolidated government, county school district, independent school district, other political subdivision of the state, any public agency or authority of any of the foregoing, or any combination of any of the foregoing;

(B) Regional commission;

(C) Public authority created by local Act or local constitutional amendment of the General Assembly; or

(D) Public authority created by general law which applies to an area of less than the entire state and which requires activation by a county or municipal government.

(b) Each grant of state funds to a recipient unit of local government from the Governor's emergency fund or from a special project appropriation in an amount greater than $5,000.00 shall be conditioned upon the receipt by the state auditor of a properly completed grant certification form. The form shall be designed by the state auditor and shall be distributed with each covered grant as required by this Code section. The grant certification form shall require the certification by the recipient unit of local government and by the unit of local government auditor that the grant funds were used solely for the express purpose or purposes for which the grant was made. Such form shall be filed with the state auditor in conjunction with the annual audit required under Code Section 36-81-7 or 50-6-6 or any other applicable Code section for each year in which such grant funds are expended or remain unexpended by the unit of local government. A recipient unit of local government which is not otherwise subject to the annual audit requirements specified in this subsection shall file a grant certification form with the state auditor no later than December 31 of each year in which such grant funds are expended or remain unexpended. For grant funds to subrecipients, the certification by the unit of local government auditor required by this subsection may also be made by an in-house or internal auditor of the unit of local government who meets the education requirements contained in subparagraph (b)(3)(A) of Code Section 43-3-9. The cost of performing any audit required by this subsection or paragraph (1) of subsection (d) of this Code section shall be an eligible expense of the grant. However, the amount charged shall not exceed 2 percent of the amount of the grant or $250.00 per required audit, whichever is less. The unit of local government to whom the grant is made may deduct the cost of any such audit from the funds disbursed to the subrecipient.

(c) Where the grant of state funds is for $5,000.00 or less, the grant shall require submission to the state auditor of a properly completed

grant certification form as required by subsection (b) of this Code section except that only the unit of local government need certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. However, where such grant is to a subrecipient, the grant shall require submission to the unit of local government of a notarized affidavit executed by the executive director, president, chairperson, chief executive officer, or other responsible party representing the subrecipient, by whatever name or title, to whom the grant funds are disbursed. The affidavit shall certify under oath that the funds were used solely for the express purpose or purposes for which the grant was made. Such affidavit shall be submitted annually for each year that grant funds are expended or remain unexpended according to a schedule established by the unit of local government and shall be made on a form designed by the state auditor and distributed with each covered grant as required by this Code section.

(d)(1) Notwithstanding subsection (b) or (c) of this Code section, the Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require any recipient unit of local government to obtain or perform an audit of any grant of state funds from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(2) Notwithstanding subsection (b) or (c) of this Code section, a recipient unit of local government shall have the right or authority to obtain or perform an audit of any grant of state funds to a subrecipient from the Governor's emergency fund or from a special project appropriation, regardless of the amount thereof.

(e) The failure to comply with the requirements of this Code section shall result in a forfeiture of a state grant and the return to the state of any such grant funds which have been received by the unit of local government. In the case of a state grant awarded to a subrecipient, the subrecipient shall be responsible for the return to the state of any such grant funds if it is determined that the funds were not used for the express purpose or purposes for which the grant was made. A grant recipient or subrecipient shall be ineligible to receive funds from the Governor's emergency fund or from a special project appropriation until all unallowed expenditures are returned to the state, except that a recipient unit of local government shall not be ineligible for such funds where a subrecipient has not used funds it received for the express purpose or purposes for which the grant was made.

(f) No subrecipient shall be considered an agent of the unit of local government or be indemnified or held harmless by the unit of local government for any negligence, misfeasance, or malfeasance of the

subrecipient, and a recipient unit of local government shall not be liable for any expenditure of state grant funds by a subrecipient. (Code 1981, § 36-81-8.1, enacted by Ga. L. 1998, p. 1611, § 5; Ga. L. 2003, p. 811, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2006, p. 718, § 1/SB 202; Ga. L. 2008, p. 181, § 16/HB 1216; Ga. L. 2014, p. 136, § 2-2/HB 291.)

The 2014 amendment, effective July 1, 2014, substituted "subparagraph (b)(3)(A) of Code Section 43-3-9" for "subparagraph (a)(3)(A) of Code Section 43-3-6" in the sixth sentence of subsection (b).

CHAPTER 82

BONDS

Article 1

General Provisions

Sec.

ARTICLE 1

GENERAL PROVISIONS

36-82-1. Election for bonded debt; right to sell bonds at discount; advertisements as binding statements of intention; use of surpluses; meetings open to public; refunding.

(a) When any county, municipal corporation, or political subdivision desires to incur any bonded debt, as permitted by the Constitution of Georgia, the election required shall be called and held in accordance with this Code section and Code Sections 36-82-2 through 36-82-4.

(b) The officers charged with levying taxes, contracting debts, and the like for the county, municipal corporation, or political subdivision shall give notice for not less than 30 days immediately preceding the day of the election in the newspaper in which sheriff's advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question of whether bonds shall be issued by the county, municipal corporation, or political subdivision. The notice shall specify the principal amount of the bonds to be issued, the purpose for which the bonds are issued, the interest rate or rates which such bonds are to bear, and the amount of principal to be paid in each year during the life of the bonds. The notice, in the discretion of the issuing body, in lieu of specifying the rate or rates of

interest which the bonds are to bear, may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the election notice or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the election notice.

(b.1) Repealed.

(c) Nothing contained in this Code section shall be construed as prohibiting or restricting the right of the issuing body to sell bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the election notice.

(d) Every legal advertisement of a bond election shall contain a reference that any brochures, listings, or other advertisements issued by the governing body of any county, municipality, or other political subdivision of this state or by any other person, firm, corporation, or association with the knowledge and consent of the governing body of such county, municipality, or other political subdivision of this state shall be deemed to be a statement of intention of the governing body of such county, municipality, or other political subdivision of this state concerning the use of the bond funds; and such statement of intention shall be binding on the governing body of such county, municipality, or other political subdivision of this state in the expenditure of any such bond funds or interest received from such bond funds which have been invested, unless the governing body of such county, municipality, or other political subdivision of this state uses such bond funds for the retirement of bonded indebtedness, in the manner provided for in this Code section; and such statement of intention shall be set forth in the resolution pursuant to which such bonds are issued. Bond funds and interest received from such bond funds which have been invested shall be expended in the manner in which advertised and for the purpose stated in such statement of intention. The governing body of such county, municipality, or other political subdivision of this state may, by a two-thirds' vote, declare any project which has been established pursuant to any such statement of intention to be unnecessary. In that event, the governing body of such county, municipality, or other political subdivision of this state shall use such bond funds for the payment of all or any part of the principal and interest on any bonded indebtedness of such county, municipality, or other political subdivision of this state then outstanding. Surpluses from the overestimated projects, including interest received on bond funds of such projects, shall be used first to complete underestimated projects and all remaining funds received from interest and overestimated projects shall be used for other projects or improvements which the governing body of such county, municipal-

ity, or other political subdivision of this state may deem necessary and which are encompassed within the language of the statement of purpose in the election notice. Any meetings of any governing bodies at which any bond fund allocation is made shall be open to the public. Such meetings shall be announced to the news media in advance and shall be open to the news media.

(e)(1) It is expressly provided that any county, municipality, or other political subdivision of this state may provide for the refunding of all or any part of the outstanding bonded indebtedness of such county, municipality, or political subdivision without the necessity of a referendum therefor if the governing authority of such county, municipality, or political subdivision adopts a resolution or ordinance authorizing the issuance of general obligation refunding bonds for such purpose, provided the following conditions are met:

(A) The term of the refunding bonds shall not extend beyond the final maturity date of the bonds being refunded;

(B) The rate of interest borne by the refunding bonds shall not exceed the rate of interest borne by the bonds being refunded;

(C) The principal amount of the refunding bonds may only exceed the principal amount of the bonds being refunded to the extent necessary to effectuate a refund and to allow the reduction of the total principal and interest requirements over the remaining term of the bonds being refunded; and

(D) The proceeds derived from the sale of the refunding bonds, together with the earnings and increments derived therefrom, if any, will be sufficient to provide for the payment of the principal of, interest, and premium, if any, on the bonds being refunded and shall be deposited in an irrevocable trust fund created for that purpose.

(2) Such refunding bonds so authorized to be issued in compliance with the conditions set forth above, when issued, shall be construed and deemed to be issued in lieu of such original debt being so refunded, and the original debt upon the creation of the irrevocable trust fund and the deposit of the requisite proceeds shall not constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia, but the refunding bonds shall constitute a debt within the meaning of Article IX, Section V, Paragraph I of the Constitution of Georgia and shall count against the limitation on debt measured by the 10 percent of assessed value of taxable property as expressed therein.

(f) Any person who violates this Code section shall be guilty of a misdemeanor; provided, however, nothing contained in this Code sec-

tion shall be construed so that a violation thereof shall affect the validity of any bonds issued under this Code section. (Ga. L. 1878-79, p. 40, § 1; Code 1882, § 508i; Civil Code 1895, § 377; Civil Code 1910, § 440; Code 1933, § 87-201; Ga. L. 1960, p. 1032, § 1; Ga. L. 1968, p. 1007, § 1; Ga. L. 1976, p. 1091, § 1; Ga. L. 1981, p. 1581, § 1; Ga. L. 1982, p. 2107, § 43; Ga. L. 1984, p. 22, § 36; Ga. L. 1984, p. 1362, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 886, § 1; Ga. L. 1992, p. 2052, § 1; Ga. L. 1995, p. 355, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2014, p. 216, § 1/HB 834.)

The 2014 amendment, effective April 15, 2014, deleted former subsection (b.1), which read: "In all counties of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census, no county-wide bond election or school bond election in the unincorporated area of any such county shall be held on any date other than the date of the November general election; provided, however, that upon a determination by any superior court of competent jurisdiction that the holding of such election on the date of the November general election would cause irreparable harm to the electors of any such county, such election shall be held in the manner provided for in subsection (b) of this Code section."

ARTICLE 3

REVENUE BONDS

36-82-60. Short title.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers' standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 293 Ga. 169, 744 S.E.2d 689 (2013).

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-74. Notice to district attorney or Attorney General of resolution authorizing revenue bonds.

JUDICIAL DECISIONS

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to

value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., No. A12A0587, 2012 Ga. App. LEXIS 624 (July 5, 2012).

36-82-77. Hearing and judgment on validation; parties to proceedings; right of appeal; review of valuation of existing undertakings.

JUDICIAL DECISIONS

Standing to challenge bond validation. — Appeal filed by challengers to a trial court judgment confirming and validating a city's bond issuance was dismissed because the challengers failed to present any evidence to establish the challengers standing under O.C.G.A. § 36-82-77(a) to become parties in the bond validation proceeding; thus, the challengers lacked standing to appeal the judgment in that proceeding. Sherman v. City of Atlanta, 293 Ga. 169, 744 S.E.2d 689 (2013).

Intervention in bond validation proceeding. — Challenger in an action validating and confirming taxable revenue bonds lacked standing to intervene in the action as a result of failing to comply with the intervention procedures set forth in O.C.G.A. § 9-11-24(c); and, because the challenger lacked standing to become a party in the trial court, the challenger also lacked standing to appeal the trial court's judgment, therefore, the appeal was dismissed. Sherman v. Dev. Auth., 324 Ga. App. 23, 749 S.E.2d 29 (2013).

Bond approval not proper. — Trial court erred by validating taxable revenue bonds for a county development authority as the order validating the bonds failed to set forth sufficient findings of fact and conclusions of law to support the court's holdings and, thus, failed to satisfy the requirements of O.C.G.A. § 9-11-52(a). Sherman v. Dev. Auth., 320 Ga. App. 689, 740 S.E.2d 663 (2013).

Memorandum of agreement establishing valuation method part of lease agreement. — Because a memorandum of agreement establishing the valuation methodology to be used in assessing ad valorem taxes on a leasehold estate was referenced by the lease and dictated the methodology to be used to value a corporation's leasehold estate for ad valorem tax purposes, it constituted an integral part of the lease agreement and was properly before the trial court; in a transaction in which revenue bonds will be paid through lease proceeds, all agreements relating to the lease are properly within the trial court's jurisdiction. Sherman v. Dev. Auth., No. A12A0587, 2012 Ga. App. LEXIS 624 (July 5, 2012).

36-82-78. Effect of judgment of validation.

JUDICIAL DECISIONS

Cited in Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

36-82-85. Construction of article generally; applicability of certain other provisions of law.

JUDICIAL DECISIONS

Cited in Sherman v. City of Atlanta, 293 Ga. 169, 744 S.E.2d 689 (2013).

CHAPTER 87

PARTICIPATION IN FEDERAL PROGRAMS

Sec.
36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

36-87-2. Authority of counties and municipal corporations to participate in programs; powers.

(a) Each county and municipal corporation of the State of Georgia is authorized to participate in federal programs which provide federal grants and federal loans for such purposes including but not limited to housing, transportation, and water and waste-water treatment and distribution purposes. Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to exercise the following powers:

(1) To expend revenues, but shall not impose any new form of taxation; and

(2) To contract:

(A) With the United States and its departments and agencies;

(B) With the State of Georgia and its departments, agencies, and authorities;

(C) With regional commissions, political subdivisions of the state, and public authorities of such subdivisions; and

(D) With private nonprofit entities organized for the purpose of providing services to persons of low and moderate income when such entities are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986

when the exercise of such powers is necessary to comply with the conditions established by federal law and federal regulations for eligibility for participation in such federal programs.

(b)(1) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to expend public funds and participate in community development block grant programs and other federal programs to construct facilities to carry out the following purposes:

(A) Providing day-care services primarily to the children of persons of low and moderate income;

(B) Providing services to elderly persons;

(C) Providing health education, literacy and English language instruction, mental health and disability services, legal assistance, emergency food, and medical assistance to low and moderate income persons; and

(D) Any combination of services authorized in this paragraph.

(2) Counties and municipalities are further authorized to carry out the purposes of this subsection by contracting with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section.

(3) Any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to April 5, 1994, are validated and confirmed.

(c) State agencies rating applications from counties and municipal corporations for federal funding of the construction of child care learning centers shall, to the extent allowed under applicable federal laws or regulations, give priority to those child care learning centers located in or adjacent to industrial parks.

(d) Supplementary to any existing authority granted by law, counties and municipal corporations shall be authorized to:

(1) Participate in federal and state programs which provide funds for job training, job research assistance, and workforce development programs;

(2) Accept and expend grant funds subject to such terms as may be required by the grantor, including the duty to reimburse the grantor for any funds not expended in accordance with such terms;

(3) Contract with public agencies and nonprofit entities described in paragraph (2) of subsection (a) of this Code section for the purpose of carrying out such programs; and

(4) Ratify any contracts, programs, projects, or expenditures of public funds authorized by this subsection which were entered into, carried out, undertaken, or made prior to July 1, 1997. (Code 1981,

§ 36-87-2, enacted by Ga. L. 1993, p. 792, § 1; Ga. L. 1994, p. 822, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 696, § 1; Ga. L. 2005, p. 1484, § 1/HB 186; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 181, § 21/HB 1216; Ga. L. 2013, p. 135, § 9/HB 354.)

The 2013 amendment, effective July 1, 2013, in subsection (c), substituted "child care learning centers" for "day-care facilities" near the middle, and substituted "child care learning centers" for "day-care centers" near the end.

CHAPTER 91

PUBLIC WORKS BIDDING

Article 2

Contracting and Bidding Requirements

Article 3

Bonds

Part 1

General Provisions

Part 4

Payment Bonds

ARTICLE 1

GENERAL PROVISIONS

36-91-2. Definitions.

JUDICIAL DECISIONS

Public works construction. — Board of Regents of the University System of Georgia was immune from a suit by employees of a contractor who provided a forged payment bond to the Board; the maintenance contract was not for "public works construction" as defined in O.C.G.A. § 36-91-2(12); therefore, the provisions for payment bonds in O.C.G.A. § 13-10-60 et seq. did not apply. Further, the Board had no duty to investigate the information presented on the face of the payment bond. Bd. of Regents of the Univ. Sys. of Ga. v. Brooks, 324 Ga. App. 15, 749 S.E.2d 23 (2013).

ARTICLE 2

CONTRACTING AND BIDDING REQUIREMENTS

36-91-21. Competitive award requirements.

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advanta-

geous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals. Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f)(1) Unless otherwise required by law, no governmental entity that contracts for public works construction shall in its bid documents, specifications, project agreements, or other controlling documents for a public works construction contract:

(A) Require or prohibit bidders, offerors, contractors, subcontractors, or material suppliers to enter into or adhere to prehire

agreements, project labor agreements, collective bargaining agreements, or any other agreement with one or more labor organizations on the same or other related construction projects; or

(B) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors, or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations on the same or other related construction projects.

(2) Nothing in this subsection shall prohibit bidders, offerors, contractors, subcontractors, or material suppliers from voluntarily entering into agreements described in paragraph (1) of this subsection.

(3) The head of a governmental entity may exempt a particular public works construction contract from the requirements of any or all of the provisions of paragraph (1) of this subsection if the governmental entity finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstance under this paragraph shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the particular project who are not members of or affiliated with a labor organization.

(g) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(h) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter. (Code 1981, § 36-91-21, enacted by Ga. L. 2000, p. 498, § 1; Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 5/SB 179.)

The 2013 amendment, effective May 6, 2013, added subsection (f) and redesignated former subsections (f) and (g) as present subsections (g) and (h), respectively.

36-91-23. Disqualification of otherwise qualified bidder from bid or proposal or prequalification based upon lack of previous experience with job of that size prohibited; conditions.

In awarding contracts based upon sealed competitive bids or sealed competitive proposals, no responsible bidder shall be disqualified from a bid or proposal or denied prequalification based upon a lack of previous experience with a job of the size for which the bid or proposal is being sought if:

(1) The bid or proposal is not more than 30 percent greater in scope or cost from the responsible bidder's previous experience in jobs;

(2) The responsible bidder has experience in performing the work for which bids or proposals are sought; and

(3) The responsible bidder is capable of being bonded by a surety which meets the qualifications of the bid documents for a bid bond, a performance bond, and a payment bond as required for the scope of the work for which the bid or proposal is being sought. (Code 1981, § 36-91-23, enacted by Ga. L. 2013, p. 126, § 2/SB 168.)

Effective date. — This Code section became effective April 24, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

36-91-24. Liquidated damages and other incentive provisions for project completion.

Public works construction contracts may include both liquidated damages provisions for late construction project completion and incentive provisions for early construction project completion when the project schedule is deemed to have value. The terms of the liquidated damages provisions and the incentive provisions shall be established in advance as a part of the construction contract and included within the terms of the bid or proposal. (Code 1981, § 36-91-24, enacted by Ga. L. 2013, p. 628, § 6/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Code Section 36-91-23, as enacted by Ga. L. 2013, p. 628, § 6/SB 179, was redesignated as Code Section 36-91-24.

ARTICLE 3

BONDS

PART 1

GENERAL PROVISIONS

36-91-41. No bid bond required under certain circumstances.

When a governmental entity invites competitive sealed proposals for a public works construction project and the request for proposals for such project states that price or project cost will not be a selection or evaluation factor, no bid bond shall be required unless the governmental entity provides for a bid bond in the request for proposals and specifies the amount of such bond. (Code 1981, § 36-91-41, enacted by Ga. L. 2013, p. 628, § 7/SB 179.)

Effective date. — This Code section became effective May 6, 2013.

Editor's notes. — Former Code Section 36-91-41 was redesignated as Code Section 36-91-50 by Ga. L. 2001, p. 820, § 12, effective July 1, 2001.

PART 4

PAYMENT BONDS

36-91-92. Notice of commencement.

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (2) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement. (Code 1981, § 36-91-72, enacted by Ga. L. 2000, p. 498, § 1; Code 1981, § 36-91-92, as redesignated by Ga. L. 2001, p. 820, § 12; Ga. L. 2013, p. 628, § 8/SB 179.)

The 2013 amendment, effective May 6, 2013, substituted "paragraph (2)" for "paragraph (1)" in the middle of subsection (b).

CHAPTER 92

WAIVER OF IMMUNITY FOR MOTOR VEHICLE CLAIMS

36-92-1. Definitions.

Law reviews. — For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

Motor vehicle. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

36-92-2. Maximum waiver amount; exceptions; liability; recovery of interest.

JUDICIAL DECISIONS

Sovereign immunity not waived. Bus driver failed to show that the waiver of sovereign immunity under O.C.G.A. § 36-92-2(a) for the negligent use of motor vehicles applied to the driver's claims for wrongful discharge, false arrest, and malicious prosecution because the school district's alleged liability for those claims was not predicated upon the school district's negligent use of a motor vehicle. Bomia v. Ben Hill County Sch. Dist., 320 Ga. App. 423, 740 S.E.2d 185 (2013).

Waiver of immunity. — When a local entity purchases automobile liability insurance in an amount greater than the prescribed limits set forth for a waiver of sovereign immunity under O.C.G.A. § 36-92-1 et seq., the entity waives sovereign immunity to the extent of the entity's insurance coverage as required by O.C.G.A. § 33-24-51(b), and the broad definition of "any motor vehicle" set forth in § 33-24-51 applies. Therefore, in a wrongful death and survivor case, a county waived sovereign immunity to the extent of the county's insurance coverage as required by § 33-24-51(b), and the Georgia legislature did not intend to apply a narrow definition of motor vehicle under O.C.G.A. § 36-92-1 in a case involving an injury caused by a bush hog and a tractor. Gates v. Glass, 291 Ga. 350, 729 S.E.2d 361 (2012).

36-92-3. No employee liability; parties to litigation; evidence; bar to further recovery.

JUDICIAL DECISIONS

Claim against police officer barred. Trial court properly concluded that O.C.G.A. § 36-92-3 barred the driver and the driver's wife from recovering against the officer in the officer's official capacity and, thus, properly dismissed the officer from the case. Ray v. City of Griffin, 318 Ga. App. 426, 736 S.E.2d 110 (2012).